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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV97–948–1 IFR]

Irish Potatoes Grown in Colorado; Change in Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the size requirement from a 2 inch minimum diameter or 4 ounce minimum weight to a 1⅞ inch minimum diameter for Centennial Russet variety potatoes grown in Area No. 2 of Colorado. The current size requirement for Centennial Russets is larger than the requirement for similar long varieties. This change recognizes the similarity and should provide potato handlers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of potatoes.

DATES: Effective September 30, 1997; comments received by November 25, 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, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule relaxes the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1⅞ inch minimum diameter with no minimum weight option. This change will enable handlers to market a larger portion of the crop in fresh market outlets and is expected to improve the marketing of Colorado potatoes. Further, all Russet varieties will now be required to meet the same size specifications.

Section 948.22 (7 CFR 948.22) authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period.

Section 948.4 of the order defines the counties included in Area No. 2, which is commonly known as the San Luis Valley. The Colorado Potato Administrative Committee, San Luis Valley Office (Area No. 2) (Committee), is the agency responsible for local administration of the Federal marketing order in Area No. 2.

Size regulations for potatoes grown in Area No. 2 are currently in effect under § 948.386. Centennial Russet variety potatoes must be 2 inches minimum diameter or 4 ounces minimum weight. Other long varieties, which includes other Russet varieties, must be 1⅞ inch minimum diameter, with no minimum weight option. This rule amends that section by removing the weight requirement option for Centennial Russets and reducing the minimum diameter requirement for Centennial Russets to 1⅞ inches. Thus, all Russet varieties will be required to meet the same minimum diameter. The Committee unanimously recommended this change at its August 21, 1997, meeting.

When the current size regulations were established, the Centennial Russet was the dominant variety in the San Luis Valley (Area No. 2), accounting for approximately 65–75 percent of the crop. The other major Russet variety grown in the San Luis Valley was the Russet Burbank, a slimmer potato which was required to meet the 1⅞ inch minimum diameter. Today, the Russet Burbank has been phased out completely and the Centennial Russet accounts for less than 10 percent of the crop. The Burbank and the Centennial have been replaced by other varieties, including new Russet varieties which

have the same bulky features as the Centennial.

The new varieties, however, are required only to meet the 1⅞ inch minimum diameter, not the 2 inch minimum diameter or 4 ounce minimum weight requirement that Centennial Russets must meet. The industry is concerned that Centennial Russets could be misrepresented as one of the new Russet varieties, so as to comply only with the smaller size requirement. This rule, by establishing the same size requirements for all Russet varieties, eliminates this possibility.

Reducing the size requirement will allow handlers to market a larger portion of the Centennial Russet crop in fresh outlets. This change is expected to improve the marketing of Colorado potatoes and increase returns to producers.

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

There are approximately 120 handlers of Colorado potatoes who are subject to regulation under the marketing order and approximately 400 producers of Colorado potatoes in the regulatory areas. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

Section 948.22 of the order authorizes the issuance of handling regulations for potatoes grown in Colorado. This rule relaxes the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1⅞ inch minimum diameter with no weight option. This change will enable handlers to market a larger portion of the crop in fresh market outlets and is expected to improve the marketing of Colorado potatoes. There is no available information detailing how many potatoes this relaxation will allow to be marketed which could not have been marketed prior to this action.

This rule also eliminates a potential compliance problem, as all Russet varieties will now be required to meet the same size specifications. Other Russet varieties are currently required only to meet the smaller size regulation of 1 ⅞ inch diameter. Because some the new Russet varieties with characteristics very similar to Centennials face the smaller size requirement and have surpassed Centennials in popularity, there is a possibility that Centennials could be misrepresented as one of the new Russet varieties.

The only viable alternative to reducing the size requirement for Centennials is to increase the size requirement for all other long potatoes, including all other Russets. The Committee surveyed 270 growers from Area No. 2 concerning grade and size regulation. Both options for equalizing the size regulations for all long potatoes were included in the survey. The participating growers rejected increasing the size requirements for all other long potatoes, which would have reduced the number of Colorado potatoes on the market, in favor of the size requirement reduction established by this rule.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 21, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

Also, the Committee surveyed 270 producers in Area No. 2, the majority of whom are small entities, concerning regulation during the 1997–98 potato shipping season. This rule reflects the outcome of that survey of predominantly small growers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling regulations currently prescribed for Area No. 2 under the Colorado potato marketing order. Any comments received will be considered prior to finalization of this rule.

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 rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements in the handling regulations; (2) this action must be taken promptly to be in place before handlers begin shipping heavily in early October; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.386 is amended by removing paragraph (a)(2), redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(2) through (a)(5), and revising newly redesignated paragraphs (a)(2) and (a)(5) to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(2) *Long varieties.* U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

* * * * *

(5) None of the above categories of potatoes identified in paragraphs (a)(1) through (a)(5) of this section may be commingled in the same bag or other container.

* * * * *

Dated: September 22, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–25619 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV–97–989–2 FR]

Raisins Produced From Grapes Grown in California; Suspension of Provisions Concerning Certain Offers of Reserve Raisins to Handlers for Free Use

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension of rule.

SUMMARY: This final rule suspends language in provisions of the raisin marketing order concerning certain offers of reserve raisins to handlers for free use. The marketing order regulates the handling of raisins produced from grapes grown in California, and is administered locally by the Raisin Administrative Committee (Committee). This rule indefinitely suspends certain language to provide the Committee more flexibility in meeting its marketing needs. This rule was unanimously recommended by the Committee.

EFFECTIVE DATE: This final rule becomes effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This final rule indefinitely suspends language in §§ 989.54(g) and 989.67(j) of the order. The suspension concerns certain offers of reserve raisins to handlers for free use. The suspension was unanimously recommended by the Committee.

Section 989.54(g) of the order describes two annual offers of reserve raisins to handlers for free use for each varietal type for which preliminary volume control percentages have been computed and announced. Each of these offers consists of 10 percent of the prior year's shipments of free raisins and reserve raisins sold for free use. These offers are known to the industry as the ''10 plus 10'' offers. The order currently mandates that the 10 plus 10 offers must be made simultaneously on or before November 15 of the crop year. The order defines the crop year for raisins as the 12-month period beginning with August 1 of any year and ending with July 31 of the following year.

Section 989.54(a) establishes that the trade demand for raisins shall be 90 percent of the prior crop year's shipments with adjustments for inventory, meaning that the trade demand excludes 10 percent of the prior year's shipments. Preliminary volume control percentages, which are computed and announced by October 5 of each crop year, make up to 85 percent of the trade demand available to handlers for disposal in any marketing channel. The final free percentage, which is recommended by the Committee by February 15 of each crop year, makes the remainder of the trade demand available to handlers.

Standard raisins are raisins which meet the minimum grade and condition standards for natural condition raisins. Handlers are required to place the reserve percentage of their standard raisin acquisitions in the reserve pool. One of the 10 plus 10 offers makes available, from the reserve pool, the 10 percent of the prior year's shipments which the final free percentage does not make available. This offer, then, equates the current year's supply with the prior year's shipments. Because the free percentage and this 10 plus 10 offer only make available the tonnage shipped during the prior year (with the appropriate inventory adjustments), the other 10 plus 10 offer, intended for market expansion, makes an additional 10 percent available to handlers from the reserve pool. Acceptance of the 10 plus 10 offers is voluntary; handlers are not required to purchase any reserve raisins.

The Committee believes that changes in the raisin industry, particularly changes to export programs administered under the marketing order, have made the 10 plus 10 offers a more important source of raisins for many handlers. The Committee's export programs in the early 1990's allowed handlers who exported California raisins to purchase, at a reduced rate, reserve raisins for free use. This effectively blended down the cost of the raisins which were exported, allowing handlers to be price competitive in export markets, which generally feature lower prices than the domestic market. One effect of this program was that handlers would continuously purchase reserve raisins for free use throughout the crop year. Handlers who knew they would be exporting raisins did not need to purchase enough raisins to meet their needs for the entire year early in the season.

The current export program, which is in its second year of operation, offers cash, rather than reserve raisins, to exporting handlers. This has caused handlers to make larger purchases of 10 plus 10 raisins to replace the raisins formerly acquired through the export program. When handlers make large 10 plus 10 purchases early in the season, rather than small reserve purchases throughout the season, however, they are committing themselves to raisins before they have a firm estimate of their needs for the year. Handlers are forced to guess at the demand for the remainder of the crop year. If this guess is too high, prices will fall and there

may be excess free tonnage inventory at the end of the crop year, resulting in market instability and a lower free percentage for the following year. If the guess is too low, market needs may not be met and the Committee may be forced to dispose of the excess reserve raisins in low income outlets.

Most raisin deliveries, and most of the associated costs, are concentrated between September and November, so handlers must establish large lines of credit at this time during each crop year. Because the Committee is required to make the 10 plus 10 offers concurrently on or before November 15 of the crop year, handlers must arrange for additional credit to make their 10 plus 10 purchases. The Committee believes that the inflexibility of the November 15 deadline and the requirement of simultaneous offers creates unnecessary financial stress on handlers.

Section 987.67(j) of the order lists other circumstances, including national emergency, crop failure, changing economic or marketing conditions, fire or other disasters, or to supplement an inadequate inventory to carryover to the next crop year, under which the Committee can sell reserve raisins for free use. The Committee also can offer reserve raisins for free use if raisin shipments during the first 10 months of the current crop year exceed 105 percent of shipments during the comparable period of the prior crop year. This type of offer is limited to the amount exceeding 105 percent of the prior year's shipments. Thus, if the market for raisins expands rapidly during any crop year, this provision allows the Committee to make more raisins available to handlers to supply the increased market needs. The 105 percent limit was established to safeguard against depressing raisin prices by expanding the free supply by too large a quantity. Like the 10 plus 10 offers, handler acceptance of this type of offer is voluntary.

During the past two seasons, the Committee has reduced its desirable carryout inventory level by about 20 percent, meaning that the free percentage provides for fewer raisins to remain at the end of a crop year for use in the following crop year. Reduction of the desirable carryout, coupled with the elimination of the export program which offered reserve raisins for free use, has increased the likelihood that the raisin industry might have an inadequate supply of raisins late in a crop year which featured an increase in shipments. If handlers, when making acquisition decisions early in the season, underestimate their needs for the crop year, they could be forced to either lose current sales or ship raisins which were intended to be carried over, which could prevent the industry from meeting its market needs early in the next crop year.

As an example, if the raisin industry were to experience 6 percent growth over the first 10 months of a given crop year, the Committee could offer reserve raisins for free use up to 1 percent of the previous year's shipments. With the tightening of the desirable carryout and the absence of reserve raisins offered under the export program, the industry could face a short supply of free raisins while an adequate supply of reserve raisins sat unused.

At its meeting on April 10, 1997, the Committee recommended suspending language in both §§ 989.54(g) and 989.67(j). In the former, the suspension eliminates both the simultaneous requirement and the November 15 deadline for the 10 plus 10 offers. In the latter, the 105 percent requirement is removed from the required level of shipments and the size of the reserve offer for free use.

Elimination of the simultaneous requirement and the November 15 deadline from the first sentence of § 989.54(g) will leave the following sentence, ''the Committee shall make two offers of reserve tonnage to sell to handlers to sell as free tonnage for each varietal type for which preliminary percentages have been computed and announced.'' This means that if preliminary percentages have been established, the Committee will still be required to make two 10 plus 10 offers, but these offers could take place independently at any time during the crop year.

The Committee expects that these changes will solve some of the planning and credit problems which handlers currently face. If one or both of the offers were moved to later in the crop year, handlers would be able to make better informed acquisition decisions. At the same time, a change in the offer date would ease the autumn credit burden for many handlers.

The language suspension in § 989.67(j) will leave the following as one of the circumstances which allows the Committee to offer reserve tonnage to handlers for free use: ''free tonnage shipments during the then current crop year exceeding shipments of a comparable period of the prior crop year: *Provided*, that, such sale of reserve tonnage shall be limited to the quantity exceeding shipments for the first ten months of the prior crop year''. Thus, if free tonnage shipments were up during the first ten months of a crop year, the Committee could offer reserve raisins to handlers for free use in any amount exceeding the prior year's shipments.

Following the earlier example, if the raisin industry were to experience 6 percent growth over the first ten months of a given crop year, the Committee could offer reserve raisins for free use up to 6 percent of the previous year's shipments. In fact, if the growth was only 4 percent, the Committee could offer up to 4 percent of the previous year's shipments. Under the current provisions, the Committee could make no offer at 4 percent growth because the year's growth did not meet the 5 percent threshold. The Committee believes that the current inflexibility could become problematic in the future, particularly if the industry was unable to take advantage of a growth opportunity in what has, in recent years, become a relatively stagnant market.

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order and approximately 4,500 producers of raisins in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 8 handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 8 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This final rule suspends provisions concerning certain offers of reserve raisins to handlers for free use under §§ 989.54(g) and 989.67(j) of the raisin marketing order. The current provisions in § 989.54(g) require that the

Committee make two simultaneous offers of reserve raisins for free use, each equal to 10 percent of the prior year's free shipments, on or before November 15 of each crop year for each variety for which preliminary volume control percentages have been computed and announced. These ''10 plus 10'' offers are intended to ensure that the establishment of volume control regulations will not prevent the industry from having enough raisins to meet the prior year's shipments plus some raisins for market expansion.

Changes in the Committee's export programs have caused many handlers to greatly increase their 10 plus 10 purchases. During the 5 years prior to the change to the export programs, handler purchases of raisins from 10 plus 10 offers averaged 10,355 tons. In the 2 seasons since the program was modified, the purchases increased to an average of 61,033 tons, a 489 percent increase. The requirement that the offers be made simultaneously on or before November 15 of each crop year does not allow the Committee the flexibility that it now believes is necessary for handlers to meet their market needs. Because these offers must take place so early in the season, handlers have to guess at the level of raisins they will need for the year.

Raisin handlers, because most raisin deliveries to handlers are concentrated between September and November, must establish credit lines totaling between $250–270 million each autumn. Because of the increase in 10 plus 10 purchases, handlers have had to establish an additional $75–80 million in credit during their most financially burdened period of the year. The Committee believes that the inflexibility of the November 15 deadline and the requirement of simultaneous offers creates unnecessary financial stress on handlers, and that this suspension will alleviate that stress and allow the handlers to better plan to meet their market needs.

Section 989.67(j) of the order authorizes the Committee to offer reserve raisins for free use if raisin shipments during the first 10 months of the current crop year exceed shipments during the comparable period of the prior crop year. Thus, if the market for raisins expands rapidly during any crop year, this provision allows the Committee to make more raisins available to handlers to supply the increased market needs. Any such offer is limited, however, to the amount of raisins exceeding 105 percent of the prior year's shipments.

As described above, handlers are now making their acquisition decisions earlier in the season than in previous years. In addition, the Committee has tightened its supply situation during the last 2 seasons by reducing its desirable inventory level and eliminating the feature of its export program which made reserve tonnage available to handlers for free use. The Committee believes that these factors leave the industry with little room for error; if handlers underestimate the tonnage that is needed to meet the market needs, there are too few avenues for acquiring raisins for free use later in the season. In a growth year, a poor estimate could result in customers with unmet needs.

The earlier example discussed years in which the industry experienced 4 and 6 percent growth, and that the Committee now believes that the inflexibility of § 989.67(j) could prevent the industry from taking advantage of growth opportunities in what has become a relatively stagnant market. According to the Committee's 1996–97 marketing policy, during the last 10 crop years free shipments have ranged between 290,646 (in 1986–87) and 338,881 tons (1990–91). The most recent complete crop year's shipments (1995–96) were the lowest, 315,170 tons, since 1986–87. The Committee calculates that the loss of just 1 percent of annual shipments due to the inability to supply the late season market would cost about $3 million in grower revenue.

The Committee also considered the following situation. If free shipments during 10 months of a crop year were 275,000 tons, and shipments grew by 4 percent (11,000 tons) during the same time period during the following crop year, the current provision would allow for no reserve offer due to growth. Under this suspension, however, the Committee could offer up to 11,000 tons of reserve raisins for free use. Assuming a profit to handlers of 1 cent per pound, the Committee calculates that operating under the current provision would cost handlers $220,000 in profit and growers $11 million in revenue. The benefits generated by this rule are not expected to be disproportionately greater or less for small handlers or producers than for large entities.

The Committee discussed alternatives to this change, including not suspending any language in either section of the order. Suspending the provisions discussed herein provides the Committee with flexibility, including the option of operating exactly as it does now. If the Committee were to find any change was not beneficial, the suspension does not prevent the Committee from returning to its current procedures for the next year. Leaving the sections as they currently stand, however, offers the Committee no marketing flexibility. The Committee also recognized that reserve raisins can be offered for free use to supplement an inadequate carryover inventory, but thought that this option could be too late to prevent lost sales. Also, this suspension will not prevent the Committee from selecting such a course.

This final rule suspends language concerning offers of reserve tonnage raisins under the raisin marketing order. The order currently authorizes such offers and would continue to do so. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was issued by the Department on July 22, 1997, put on display at the Office of the Federal Register on July 27, 1997, and published in the **Federal Register** on July 28, 1997. Copies of the rule were mailed by the Committee's staff to all Committee members, raisin handlers, and dehydrators. Finally, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended August 27, 1997. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the order language to be suspended, as hereinafter set forth, no longer tends to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5

U.S.C. 553) because the crop year is underway and this rule suspends language concerning offers of reserve tonnage raisins to handlers for free use. This action could provide the Committee with more flexibility in meeting its marketing needs and therefore should be implemented as soon as possible. Further, handlers are currently making their marketing plans for the upcoming season. Handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 989.54 [Amended]

2. In § 989.54, paragraph (g) the words, ''On or before November 15 of the crop year,'' and ''simultaneous'', are suspended indefinitely from the first sentence.

§ 989.67 [Amended]

3. In § 989.67, paragraph (j) the words, ''by more than 5 percent'' and ''105 percent of'', are suspended indefinitely from the first sentence.

Dated: September 22, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–25621 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1138

[DA–97–07]

Milk in the New Mexico-West Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document suspends certain provisions of the pool plant and producer milk definitions of the New Mexico-West Texas Federal milk marketing order for a two-year period. Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a majority of the producers who supply milk to the market, requested continuation of the current suspension which would limit the pooling of diverted milk. Continuation of the suspension currently in effect is necessary to ensure that dairy farmers who have historically supplied the market will continue to have their milk priced under the New Mexico-West Texas order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: October 1, 1997, through September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202)720–9368, e-mail address Clifford__M__Carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 7, 1997; published May 13, 1997 (62 FR 26257).

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 174 producers was pooled on the New Mexico-West Texas Federal milk order. Of these producers, 26 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 19 handlers operating pool plants under the New Mexico-West Texas order. Twelve of these handlers would be considered small businesses.

The suspension continues the current suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The continued suspension will allow more pooling of diverted milk. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New Mexico-West Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 13, 1997 (62 FR 26257) concerning a proposed suspension of certain

provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and one comment opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of October 1, 1997, through September 30, 1999, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1138.7, paragraph (a)(1), the words ''including producer milk diverted from the plant,'';

2. In § 1138.7, paragraph (c), the words ''35 percent or more of the producer''; and

3. In § 1138.13(d), paragraphs (1), (2), and (5).

Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The provisions that are suspended limit the pooling of diverted milk. This suspension will be effective from October 1997 through September 1999. The current suspension will expire September 30, 1997.

This rule continues the suspension of:

1. The requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted;

2. The requirement that a cooperative association must deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant;

3. The requirement that a producer must deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant;

4. The provision that limits a cooperative's diversions to nonpool plants to an amount equal to the milk it caused to be delivered to, and physically received at, pool plants during the month; and

5. The provision that excludes from the pool, milk diverted from a pool plant to the extent that it would cause the plant to lose its status as a pool plant.

Continuation of the current suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the New Mexico-West Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1995 and therefore should be continued until restructuring of the Federal order program is achieved as mandated in the 1996 Farm Bill.

A comment in support of the continuation of the suspension was filed by Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., two cooperative associations representing producers whose milk is pooled on Order 138. The cooperative associations state that the continued suspension is necessary to balance markets in the Texas and New Mexico milksheds and to allow producers in the area to participate in the Federal order program.

Select Milk Producers, Inc. (Select), a dairy cooperative located in New Mexico representing producers that account for approximately one-third of the milk that has been historically associated with the New Mexico-West Texas Marketing area, submitted a comment in opposition to the continued suspension. The cooperative states that current marketing conditions do not warrant the suspension of segments of performance standard provisions in the marketing area. According to the commentor, pooling standards that are loose or non-existent permit abusive pool shifting to occur and may result in the inefficient and uneconomical movement of milk supplies.

The cooperative association opposes the suspension of the portion of the pool plant provision which would exclude producer milk diversions for purposes of pool plant qualification. According to Select, without such a standard there is an unlimited amount of milk that can be attached to the order and diverted.

Select states that instead of suspending the pooling qualifications altogether as proposed by AMPI, the Secretary should utilize his authority to alter the shipping requirement by up to 10 percentage points as specified in Order 138. A reduced shipping requirement, according to Select, would permit qualification of milk in the order without eliminating the provision entirely.

The cooperative also states that the ''touch-base'' provision included in the New Mexico-West Texas order should not be suspended entirely, but that a minimum touch-base requirement should be maintained to ensure that loose shipping requirements are not abused. Furthermore, Select states that the proponent fails to identify the amount of milk that may be depooled if the standard limiting the total quantity of milk diverted by a cooperative association is not suspended.

During the past two years, milk production in this region has increased while Class I utilization has decreased. Thus, a return to the pooling standards of the order would likely result in milk movements solely for pooling requirements and/or some milk being depooled. The continuation of the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the New Mexico-West Texas marketing area will continue to benefit from pooling and pricing under the order.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning October 1, 1997, through September 30, 1999.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting and one comment opposing the continued suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1138

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1138 is amended as follows:

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1138 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1138.7 [Suspended in part]

2. In § 1138.7, paragraph (a)(1), the words ''including producer milk diverted from the plant,'' are suspended;

3. In § 1138.7, paragraph (c), the words ''35 percent or more of the producer'' are suspended; and

§ 1138.13 [Suspended in part]

4. In § 1138.13, paragraphs (d) (1), (2), and (5) are suspended.

Dated: September 22, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–25620 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1717

RIN 0572–AB26

Settlement of Debt Owed by Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Administrator of the Rural Utilities Service (RUS) hereby establishes policies and standards for the settlement of debts and claims owed by rural electric borrowers. In addition to establishing policies and standards for debt settlement, the rule establishes RUS policy on subsequent loans to borrowers whose debt has been restructured.

DATES: This rule is effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–720–9545.

SUPPLEMENTARY INFORMATION: This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of the Rural Utilities Service (RUS) has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Therefore, the Regulatory Flexibility Act does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements: The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0116.

Background

On April 4, 1996, Public Law 104–127 (110 Stat. 888) amended section 331(b) of the Consolidated Farm and Rural Development Act (Con Act) to extend to RUS loans and loan guarantees the Secretary of Agriculture's authority to compromise, adjust, reduce, or charge-off debts or claims owed to the government (collectively, debt settlement). The amendment also extended to the security instruments, leases, contracts, and agreements administered by RUS, the Secretary's authority to adjust, modify, subordinate, or release the terms of those documents. The Secretary of Agriculture, in 7 CFR 2.47, has delegated authority under section 331(b) to the Administrator of RUS, with respect to loans made or guaranteed by RUS.

The proposed rule to implement this new authority was published in the **Federal Register** on March 3, 1997 at 62 FR 9382. Comments were received from 42 different individuals or organizations, including the National Rural Electric Cooperative Association (NRECA), the National Rural Utilities Cooperative Finance Corporation (CFC), the Edison Electric Institute (EEI), the Office of Inspector General of the U.S. Department of Agriculture, an ad hoc group of 6 investor-owned utilities (IOUs), 9 power supply borrowers, 16 distribution borrowers, and 12 other individuals or organizations. Two of the power supply borrowers submitted identical comments, which were supported by identical or supporting comments from 9 of their members. Five other distribution borrowers and one state-wide borrower association submitted comments identical to their power supplier's comments.

In general, comments from NRECA, CFC, and most borrowers supported a more expansive use of debt relief under section 331(b) of the Con Act, more flexibility and discretion for the Administrator to grant debt relief, no limitation on the debt relief measures, such as the proposed 5 percent floor on interest rates, and other changes in support of more generous terms and conditions for defaulting borrowers and other borrowers facing financial or competitive problems. In contrast, 2 distribution borrowers opposed settlement of borrowers' debts, stating that debt forgiveness is unfair to the majority of cooperatives who exercise fiscal responsibility and presents an undesirable public image for all electric cooperatives. EEI, the ad hoc group of 6 IOUs, and 2 individual IOUs generally favored strict limitation of the Administrator's debt settlement authority to borrowers in default or where default is imminent; more specific and more restrictive standards for determining eligibility for relief and the amount of relief provided; referral of most cases to the Department of Justice for settlement under the Attorney General's settlement authority; more extensive documentation of the need for relief, the amount of relief provided, and the underlying justification; and greater congressional and public oversight of RUS' debt settlement activities.

All comments received were considered in drafting this final regulation. The more common and more significant comments are discussed below.

Information Collection and Recordkeeping Requirements

Several commenters expressed concern that the estimate of 2 responses per year from the public, in the from of borrowers seeking debt settlement, was too low and might impose an artificial limit on the number of applications for

debt relief RUS would consider. The estimate is nothing more than an estimate of the average number of responses over a period of several years. More applications may be received in some years than in others. This estimate does not place any limit on the number of legitimate applications RUS would consider.

Expansion of Use of Debt Settlement Authority

As indicated above, NRECA and several borrowers urged that the rule be expanded to authorize the use of debt relief to lower the costs of borrowers that, although not in default and not expected to face default within the foreseeable future, nevertheless face serious financial or competitive problems. They argued that Congress intended the new debt settlement authority to be used in this expansive way. EEI and the ad hoc group of 6 IOUs argued just the opposite. They argued that Congress intended the authority to be used only in cases where a borrower has defaulted or where default is imminent. They further argued that providing debt relief to non-defaulting borrowers would give an unfair competitive advantage to cooperatives at the expense of IOUs and other utilities, which they and other taxpayers would be required to pay for. They also said that such expanded use of debt relief would constitute a federal program of stranded cost recovery (avoidance) for cooperatives, at taxpayer expense, without any direction from Congress on stranded cost recovery for the electric industry as a whole.

RUS does not believe that the language of section 331(b) or the legislative history of the section supports the expansive use of debt settlement to lower the costs and improve the competitive positions of borrowers that are not in default nor expected to default in the foreseeable future. Furthermore, RUS does not believe it would be good policy to accept applications with respect to defaults projected far into the future. There would be too many uncertainties with respect to a borrower's particular circumstances and the competitive and regulatory environment within the industry as a whole. It would be too difficult to accurately assess the borrower's problems, the likelihood of default, effective remedial actions, and the actual need for and appropriateness of debt settlement.

NRECA and several borrowers also urged that debt relief be used to encourage mergers between borrowers, regardless of whether or not any of the parties to the merger are in default or are expected to default in the foreseeable future. RUS agrees that our policies and programs ought to support mergers and consolidations between borrowers that will likely result in economies of scale and lower operating costs, better management, and improved opportunities for innovation, technological development, market expansion, and better customer service. This past December, with publication of 7 CFR 1717 subpart D, RUS instituted several new forms of transitional assistance for borrowers entering into economically beneficial mergers and consolidations. While such assistance is appropriate and strongly supported by RUS, RUS does not believe it is appropriate to use debt relief under section 331(b) of the Con Act to encourage mergers or consolidations in the absence of default or the likelihood of default in the foreseeable future.

Some borrowers also argued that, in support of the objectives of the RE Act, mergers between borrowers in connection with debt settlement should be given preference to mergers with or acquisitions by nonborrowers. While as a general proposition, RUS is very supportive of economically beneficial mergers that will strengthen both loan security and service to rural electric consumers, and is happy to provide transitional assistance for such mergers under 7 CFR part 1717 subpart D, RUS does not believe it is appropriate to give preference to mergers between borrowers in connection with debt settlements if granting such preference would in any material way reduce debt recovery by the government in comparison with any other debt settlement alternative.

Reports to Congress and the Public

The ad hoc group of 6 IOUs recommended that the findings of the in-depth analysis used to determine the need for and amount of debt settlement be published in the **Federal Register** in each case, with notice and comment from the public; that RUS be required to report periodically to Congress (also supported by EEI) on borrowers seeking settlement, the amount of money at risk, the timetable for acting on requests, and the status of settlements under consideration, with the information being made available to the public; and that RUS publish written orders in the **Federal Register** on final debt settlements, detailing the basis for the debt settlement decision, and providing opportunity for public comment. The commenters argued that these procedures would keep Congress better informed; improve the information available to the Administrator in making debt settlement decisions; and give interested taxpayers and competitors of co-ops a chance to provide input on the co-ops' financial and competitive positions and their need for debt settlement, and explain how alternative workout solutions would affect them.

Regarding the recommendation that RUS be required to report periodically to Congress, it should be noted that RUS does report to Congress on its debt settlement activities as part of the budget process, in testifying before congressional oversight committees, and in responding to special requests from Congress. Since Congress always has the prerogative to request status reports and hearings, RUS does not believe it is necessary to require such reporting in this regulation.

Publishing the findings of the in-depth analyses of borrowers' needs for debt settlement and the justification for the amount of settlement provided, and providing opportunity for public comment, presents several problems. It could risk divulging the government's strategy and internal deliberations on debt settlements, thus damaging the government's ability to achieve maximum recovery in other debt settlement cases. In addition, much of the information about a borrower and alternative workout scenarios contained in an in-depth analysis could be used by the borrower's competitors, other creditors or other parties, to the disadvantage of both the borrower and the government. Such information should not be made routinely available to the public at large. Also, allowing the normal 30 to 60 days for public comment on the in-depth analyses could cause delays in some cases, such that certain opportunities with a limited timeframe could be missed, to the detriment of both the borrower and the government.

Moreover, development of the in-depth analyses, whether supervised by RUS or an independent consultant, would include the gathering of all relevant information from sources likely to have information bearing on the question of a borrower's need for debt settlement and the alternatives that will likely maximize the government's debt recovery. For example, in many cases, RUS will require that a competitive bid be conducted for the borrower's system to determine its value. Relevant information would be expected to be obtained from bidders and other parties as part of that process and other information collection efforts. To ask for public comments on what would have to be, for reasons of confidentiality, rather heavily summarized versions of the in-depth analyses, after the analyses

have been completed, is not likely to produce much additional useful information in most cases.

As to the last point, on publishing written orders in the **Federal Register** on final debt settlements and providing opportunity for public comment, the purpose of such a procedure isn't clear. If the main purpose is to inform the public of decisions reached on debt settlements, it would be more efficient and timely to continue to rely on the trade press and general media. If the primary purpose is to provide evaluation and supervision of RUS' debt settlement activities, that function is more appropriately and effectively provided by the traditional program planning, evaluation, and budgeting processes at the RUS, USDA, Office of Management and Budget, and congressional levels.

Confidentiality of Information and the Deliberative Process

NRECA and several borrowers expressed concerns that privileged or confidential information about borrowers gathered by RUS be held in strict confidence. They expressed concerns that such information, if not held in strict confidence, could be used by competitors, other creditors, or litigants to gain financial or competitive advantage over them. RUS agrees that privileged or confidential information should be held in strictest confidence and should not be released beyond RUS and its consultants and advisors except when release of the information is necessary to determine the value of a borrower's system and the need for and appropriate type of debt settlement. For example, it would be necessary to provide certain information about a borrower when conducting a competitive bid for the borrower's system.

RUS also believes that commercial or financial information obtained from borrowers that is privileged or confidential, as well as agency documents and other information, such as inter-agency or intra-agency memoranda, letters, or papers, that are predecisional or deliberative in nature, should be withheld from the public under the exemptions in the Freedom of Information Act, such as Exemption 4. Disclosure of this information would allow other financially troubled borrowers to learn the general strategic and tactical approaches of RUS and DOJ in dealing with financially troubled borrowers. Disclosure would harm the deliberative process of RUS and DOJ in negotiating, settling, and compromising debts.

Section 1717.1201 Definitions

One commenter suggested that the definition of debt (outstanding debt) be augmented by adding several specific items, such as deferred principal and deferred interest. RUS believes that deferred principal and deferred interest ordinarily would be considered as being included as part of ''principal'' and ''accrued interest,'' which are listed as elements of outstanding debt. It was not RUS' intention that the specific items listed in the definition be all inclusive of every conceivable element and variation of nomenclature that may make up the outstanding debt of a borrower. Rather than trying to list every conceivable element, the definition has been amended to indicate that the items listed are not necessarily the only elements included in outstanding debt.

Section 1717.1202 General Policy

Several comments were received regarding paragraph (d) of this section, which sets forth several general factors (but not an exclusive list of factors) the Administrator will consider in structuring debt settlements and determining the amount of debt recovery that is possible. NRECA and several borrowers recommended that regulatory and legislative actions by states be added to the list since such actions can affect a borrower's ability to meet its financial obligations. EEI and the ad hoc group of 6 IOUs criticized paragraph (d) for failing to list, as one of the factors, the ability of the borrower to repay its debts.

Paragraph (d) is intended to set out some of the more important general factors the Administrator will consider in structuring debt settlements and determining the amount of debt a borrower can repay. These general factors relate either to public policy or the competitive positions of borrowers and their ability to meet their financial obligations. They are not intended to have priority over other factors that affect a borrower's ability to repay debt. Nor are they intended in any way to modify or diminish the policy set forth in paragraph (a) of this section that ''wherever possible, all debt owed shall be collected in full in accordance with the terms of the borrower's loan documents,'' or the policy in paragraph (c) that the Administrator's authority to settle debts will be limited to cases where ''settlement will maximize the recovery of debts and claims owed to the government.'' This fact is particularly relevant with respect to one IOU's comment that listing market and nonmarket forces that affect competition in the electric utility industry introduces a vague and overbroad provision that could result in RUS providing borrowers an unfair advantage in competitive electric markets. That is not the intent. Market and nonmarket forces are included in simple recognition of the fact that they do affect a borrower's ability to generate revenue to meet its financial obligations to the government and other creditors.

Paragraph (d) has been amended to try to allay concerns that the factors listed might somehow override the central consideration of a borrower's ability to repay debt. Also, whereas legislative and regulatory actions by the states was assumed to be included under ''other market and nonmarket forces as to their effects on competition * * *,'' they are now explicitly listed as one of the general factors that will be considered. While explicitly recognizing that state regulatory and legislative actions may affect the ability of borrowers to meet their financial obligations, RUS believes state legislators and regulators should give due consideration to the effects of their actions on the ability of rural electric systems to recover their costs and meet their financial obligations to the federal government and other creditors.

In related comments, EEI and the ad hoc group of 6 IOUs criticized the proposed rule for failing to set out detailed standards for deciding when a borrower is unable to meet its financial obligations and the amount of debt relief that is appropriate. These commenters also suggested several specific changes and additions to the analyses to be conducted in determining the need for and the appropriate amount of debt settlement. Several of these suggestions have been adopted, as discussed elsewhere.

As for more detailed standards for deciding when debt settlement is needed and the amount of debt settlement, RUS believes that, with the changes made, the rule provides reasonably detailed standards. Sections 1717.1202 and 1717.1204(b)(1) clearly establish that, wherever possible, all debt will be collected in full in accordance to its terms and that settlement will be used only when it will maximize the recovery of debts and claims. The remainder of § 1717.1204 sets out in substantial detail the information and actions required for the Administrator to make a determination that debt settlement is necessary and the appropriate amount and form of the settlement. Given the tremendous variation from case to case in the numerous factors that affect a borrower's ability to meet its financial

obligations (e.g., economic, financial, competitive, engineering, technological, and regulatory factors) RUS does not believe that it is possible to develop a more detailed, immutable set of decision criteria that would work well in most cases.

Section 1717.1203 Relationship Between RUS and Department of Justice

NRECA, CFC, and several borrowers asked for clarification of several aspects of this section. First, if a claim has been referred in writing to the Attorney General for settlement under the Attorney General's authority, can the claim be referred back to the Administrator for action? Yes, it can, at the discretion of the Attorney General. Second, if a claim has been referred in writing to the Attorney General, is there a formal mechanism by which the borrower or the Administrator could request that the claim be referred back to the Administrator? No, there is no formal mechanism. A claim could be referred back to the Administrator at the discretion of the Attorney General. Third, if a borrower has previously had its debt settled under the authority of the Attorney General and the borrower applies for additional relief on any outstanding debt to the government, can the Administrator use his or her authority to consider the request from the borrower? The Administrator could consider the borrower's request after promptly notifying the Attorney General that the request has been received. These points have been clarified in the changes made to § 1717.1203.

Section 1717.204(b) Need for Debt Settlement

The Office of Inspector General (OIG) of the U.S. Department of Agriculture recommended that a borrower's application for debt settlement include a certification by the borrower that it is unable to meet its financial obligations. RUS agrees with the recommendation and has revised § 1717.204(b) to require a resolution to that effect by the borrower's board of directors.

OIG also recommended the borrower be required to certify that all the information provided to RUS in connection with the application for debt settlement is true and accurate in all material respects. RUS has adopted this recommendation and has added a new paragraph (m) to § 1717.1204.

NRECA and several borrowers criticized the provision in paragraph (b)(1) that would limit the use of debt settlement to borrowers that have defaulted or are likely to default within 24 months of the borrower's application for debt settlement. They felt that either there should be no limit on the forecast period within which a borrower is likely to default, or that the forecast period should be longer. Some of them felt that limiting the forecast period to 24 months would limit the use of debt settlement to essentially crisis situations, where it would be too late to help the borrower in dealing with its serious problems and too late to avoid bankruptcy. EEI and the *ad hoc* group of 6 IOUs argued that debt settlement should be used only when a borrower has in fact defaulted, and that use of a 24 month forecast period for when a borrower is likely to default would amount to an extraordinary grace period and would result in borrowers receiving an unfair subsidy from RUS at the expense of taxpayers and the borrowers' competitors.

RUS continues to believe that its middle ground position is the right one on this issue. It does not believe that debt settlement should be used only when a borrower has already defaulted. Debt settlement should be one of the tools available to assist borrowers in addressing their own problems when it is reasonably clear that the borrower will default without some debt relief. RUS believes, however, that a specific, defined time period within which a borrower is likely to default is needed to discourage unmerited or wildly speculative applications for relief, and to focus government resources on problems that can be defined and resolved with some degree of certainty, as opposed to distant potential problems that may not materialize or may change greatly in the rapidly changing industry environment. This approach is an important element in maximizing debt recovery by the government.

The forecast period is an aid for identifying cases where default is relatively imminent. It does not establish the time period during which RUS will consider the borrower's application for relief. Nor does the forecast period limit in any way discussions between RUS and borrowers regarding their financial and economic problems, possible actions by the borrowers to address their problems, and any assistance that RUS may be able to offer, short of debt settlement, such as deferral of principal and interest payments under section 12 of the RE Act, merger incentives under 7 CFR 1717 subpart D, or waiver of certain requirements and controls under §§ 1710.4 or 1717.600(c). Eliminating the forecast period and accepting applications from borrowers who assert that they may default at some distant point in the future would not provide greater incentive for borrowers to take advantage of all available opportunities to address their problems themselves or to work with RUS in fashioning workable solutions short of debt settlement. RUS continues to believe that a forecast period of 24 months is reasonable and will enable RUS to assist borrowers in dealing with serious problems before they become insurmountable.

Some borrowers argued that requiring a borrower to demonstrate to RUS that it will likely default within a certain period of time in order to be considered for possible debt settlement would ruin the borrower's credit rating and make it extremely difficult for the borrower to obtain credit from other sources. Since debt settlement will be used only when a borrower has already defaulted or will likely default in the relatively near future, RUS believes that the act of applying for debt settlement will probably have the same effect on the borrower's relationship with other creditors whether or not the borrower is required to demonstrate to RUS that it will likely default within the forecast period. No change has been made in the requirement that borrowers must demonstrate to RUS that they will probably be unable to meet their financial obligations sometime during the forecast period.

NRECA, CFC, and some borrowers argued that requiring the borrower to perform an in-depth analysis of the opportunities available to the member-owners of a power supply borrower to reduce costs or otherwise improve their financial and competitive positions could cause too much delay and should be optional. RUS believes that determination of the need for debt settlement for a power supply borrower normally should not be based only on the condition and potential remedial actions of the power supply borrower, since the efficiency and effectiveness of the borrower's member-owners will often have a major bearing on the health of the power supply borrower. If there is a serious financial problem warranting consideration of debt settlement, there appears to be no reason why a credible analysis of the member-owner's operations cannot be completed in a timely manner. However, since there could be some instances where it may be in the government's interest to waive this requirement, the provision has been amended to allow for a waiver by the Administrator.

EEI and an investment banker recommended that the in-depth analysis required to demonstrate the need for debt settlement include the possibility of raising rates in order to generate more

revenue to meet the borrower's obligations. It was assumed by RUS that such analysis would be included, and that has now been made explicit. EEI also recommended that the in-depth analysis of the need for debt settlement include a review of the borrower's contracts for services and supplies; a thorough analysis of the borrower's management structure, system operations, and financial and operating statements for possible cost reductions; and comparisons of the borrower with one or more ''benchmark'' electric utilities to help identify areas for efficiency gains. RUS agrees with the substance of these recommendations and notes that certain elements, such as including a thorough analysis of the borrower's management structure, system operations, and financial and operating statements, are already included in one form or another. Changes have been made to paragraphs (b)(2) and (b)(3) of § 1717.1204 to include analytical elements contained in EEI's recommendations that were not explicitly included in the proposed rule.

With respect to the use by RUS of independent consultants to advise on debt settlements (see paragraph (b)(3) of § 1717.1204), a borrower suggested that RUS have a pre-qualified list of consultants for borrowers to choose among, in order to eliminate the need for independent consultants. RUS disagrees with this suggestion. The choice of an independent consultant must reside entirely with RUS in order to ensure that the consultant has the expertise needed for a particular case, and is in fact independent and capable of rendering impartial and objective analysis and advice to RUS. NRECA, in its comments, recognized the need for the consultant to be completely independent of the borrower, but suggested that RUS should consider consulting with the borrower before making a selection. RUS does not believe it should be under any obligation to consult with the borrower, and would view any such obligation as compromising its ability to select a truly independent consultant.

The *ad hoc* group of 6 IOUs stated that use of independent consultants and other neutral third parties to determine the value of the borrower's system should be mandatory rather than optional. RUS agrees that independent consultants should be used in most cases to help RUS determine the value of a borrower's system, but does not believe that this should be mandatory in all cases. The additional time and cost of obtaining an independent consultant's assessment may not be worthwhile in all cases, such as when the amount of debt involved is small, or when only very limited relief is being considered, such as reamortization or extension of maturities.

Section 1717.1204(c) Debt Settlement Measures

Several commenters argued that extension of debt maturities should not be limited to the weighted average of the expected remaining useful lives of the assets pledged as security. RUS agrees that the language in the proposed rule is suitable primarily when the only assets involved are plant and other real estate. In many cases there may to other ''assets'' pledged as security for the debt, such as wholesale power contracts, irrevocable trusts, or other assured streams of revenues pledged as security, which don't fit the normal concept of an asset's useful life. Given these considerations, RUS has concluded that because of the unusual complexity of the loan security issues when debt is restructured, it is not possible to impose a fixed generic limit on debt maturity tied to specific assets or other forms of security that would serve the government's interests in all cases. The limitation in § 717.1204(c) on debt maturity has been revised such that the maturity of the restructured debt shall not extend more than 10 years beyond the latest maturity date prior to settlement. This is an outside limit, only. The actual maturity approved in each case will depend on specific consideration of quality and longevity of the collateral and other evidence or guarantees that the debt will be repaid and is reasonably secured.

Proposed paragraph (c) included reducing the interest rate on debt as one of the settlement measures, but imposed a floor of 5 percent interest, below which rates could not be reduced. NRECA and several borrowers argued that limiting the amount that interest rates could be reduced would limit the Administrator's flexibility in negotiating terms favorable to the government. RUS does not believe the 5 percent interest floor would be a problem in most cases, but recognizes that the Administrator should be able to waive the limitation if he or she determines that that would facilitate the maximization of debt recovery by the government. The paragraph has been amended accordingly.

Section 1717.1204(d) Debt Owed to Other Creditors

CFC stated that it was unfair to expect similar debt relief on a pro rata basis to be provided by other secured lenders, and said that pro rata implied equal methodology in determining the fair contribution of each secured lender. RUS disagrees that it would be unfair to expect each of the secured lenders to provide similar relief on a pro rata basis, or ''other benefits or value to the restructuring.'' RUS recognizes that a given structure of debt relief that may be suitable to one lender may not be entirely suitable to another. RUS is not trying to impose the same structure or methodology on all lenders involved, but does want to ensure that each lender provides it fair share of relief. RUS believes that the proposed language, retained herein, adequately expresses the intended objective and is not unfair to other lenders.

NRECA suggested substituting the words ''comparable concessions'' for ''similar relief on a pro rata basis . . . or other benefits or value.'' RUS does not believe that this change would result in greater assurance that each lender will provide its fair share of debt relief.

Section 1717.1204(e) Competitive Bids for System Assets

Paragraph (e) provides that RUS may ask the borrower or an independent consultant to solicit competitive bids from potential buyers of the borrower's system. One commenter asked how conflicts of interest could be avoided if the borrower, rather than an independent consultant, solicits the bids. RUS believes that any conflicts of interest can be prevented or minimized by the provisions in paragraph (e) which require the bidding process to be conducted in consultation with RUS and using standards and procedures acceptable to RUS.

A borrower stated that preference should always be given to a co-op acquiring or merging with a troubled borrower, and that competitive bids should not be required when acquisition by or merger with another RUS-financed co-op is possible. As discussed above, RUS strongly supports mergers and consolidations between borrowers that are economically beneficial to the parties and, as a result, strengthen RUS loan security. RUS provides incentives for such mergers and consolidations under 7 CFR 1717 subpart D. A merger or consolidation among two or more borrowers may represent one of the elements of a debt settlement, but should not be given preference at the expense of reducing the government's recovery of debt.

Another borrower commented that requiring competitive bids for a borrower's system and using the bids to sell the system is not a mortgage requirement for non-defaulting borrowers, and may damage the credit

worthiness of solvent borrowers. RUS notes that soliciting of competitive bids applies only to borrowers that have requested debt settlement, and in that situation is appropriate whether or not the borrower has defaulted. It is not a requirement imposed on all borrowers, but simply an option available to the Administrator for determining the value of assets of borrowers that have requested debt settlement.

The *ad hoc* group of 6 IOUs stated that the value to the Treasury of selling all or part of the borrower's assets should be considered in every case, and should not be optional. RUS does not believe it is necessary to actually solicit competitive bids in every case to determine the value of a borrower's system. Various appraisal techniques other than actual competitive bids may be more cost-effective, more timely, or otherwise more appropriate in some circumstances to determine a system's value.

Section 1717.1204(i) Regulatory Approvals

A borrower stated that RUS should be able to conditionally approve a settlement before all regulatory approvals are obtained so that the borrower could proceed to implement an action plan. NRECA stated that regulatory approvals should be required in advance of RUS approval of a debt settlement only ''insofar as possible,'' since it may not be possible to obtain the regulatory approvals in some cases. RUS would note that most remedial actions available to borrowers do not hinge on RUS approval of debt relief, and that borrowers should aggressively implement such actions without delay. However, the point is well taken that RUS could approve or preliminarily approve a debt settlement or parts of a settlement before all regulatory approvals have been obtained. The paragraph has been amended to clarify that only those regulatory approvals deemed necessary by the Administrator must be obtained before a settlement will be approved.

Section 1717.1204(j) Conditions Regarding Management and Operations

NRECA objected to the possibility of RUS imposing additional controls on the members of a power supply borrower regarding general funds and investments, based on the argument that such decisions by members impacted little on their power supplier and because bankruptcy would be an alternative for the power supply borrower. The additional controls identified in § 1717.1204(j)(3) ordinarily would not be imposed on the members of a power supply borrower that is seeking debt settlement. However, such controls on members may be appropriate in some cases, such as when the members have agreed to guarantee the debt of a power supply borrower as a condition of settling the latter's debt.

Section 1717.1206 Loans Subsequent to Settlement

One commenter stated that the paragraph is unclear and subject to various interpretations, but did not indicate what is unclear. Perhaps one area needing some clarification is whether the section would grant some right to subsequent loans to a borrower that as agreed as part of its debt settlement not to seek subsequent loans from RUS. The section does not grant any such right.

Perhaps the commenter thought that a ''presumption'' that credit support will be needed for any subsequent loans is not clear. ''Presumption'' means that credit support will be required for any subsequent loans, unless the Administrator, for good reason, determines that credit support is not needed.

The ad hoc group of 6 IOUs stated that RUS should establish a presumption that new loans will not be made to borrowers whose debts have been settled unless they can prove that they are now creditworthy. Demonstration of creditworthiness is a requirement which applies to all loans made by RUS, as set forth in 7 CFR 1710.112, 1710.113, and elsewhere in RUS regulations.

A borrower stated that if a healthy borrower acquires or merges with a borrower whose debt has been settled by RUS, the surviving entity should be exempt from the presumption that credit support will be needed for any subsequent loans. RUS does not agree that an exemption should be granted for all such cases, since the surviving entity may nevertheless be a high risk that would warrant credit support.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Claims, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons explained in the preamble, RUS hereby amends 7 CFR chapter XVII, part 1717, as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 is revised to read as follows:

Authority: 7 U.S.C. 901–950b, 1981; Pub. L. 99–591, 100 Stat. 3341–16; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

2. Subparts T through X are added and reserved and subpart Y is added to part 1717 to read as follows:

Subpart T—[Reserved]

Sec.
1717.950–1717.999 [Reserved]

Subpart U—[Reserved]

1717.1000–1717.1049 [Reserved]

Subpart V—[Reserved]

1717.1050–1717.1099 [Reserved]

Subpart W—[Reserved]

1717.1100–1717.1149 [Reserved]

Subpart X—[Reserved]

1717.1150–1717.1199 [Reserved]

Subpart Y—Settlement of Debt

1717.1200 Purpose and scope.
1717.1201 Definitions.
1717.1202 General policy.
1717.1203 Relationship between RUS and Department of Justice.
1717.1204 Policies and conditions applicable to settlements.
1717.1205 Waiver of existing conditions on borrowers.
1717.1206 Loans subsequent to settlement.
1717.1207 RUS obligations under loan guarantees.
1717.1208 Government's rights under loan documents.

Subpart T—[Reserved]

§§ 1717.950–1717.999 [Reserved]

Subpart U—[Reserved]

§§ 1717.1000–1717.1049 [Reserved]

Subpart V—[Reserved]

§§ 1717.1050–1717.1099 [Reserved]

Subpart W—[Reserved]

§§ 1717.1100–1717.1149 [Reserved]

Subpart X—[Reserved]

§§ 1717.1150–1717.1199 [Reserved]

Subpart Y—Settlement of Debt

§ 1717.1200 Purpose and scope.

(a) Section 331(b) of the Consolidated Farm and Rural Development Act (Con Act), as amended on April 4, 1996 by Public Law 104–127, 110 Stat. 888 (7 U.S.C. 1981), grants authority to the Secretary of Agriculture to compromise,

adjust, reduce, or charge-off debts or claims arising from loans made or guaranteed under the Rural Electrification Act of 1936, as amended (RE Act). Section 331(b) of the Con Act also authorizes the Secretary of Agriculture to adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Rural Utilities Service (RUS). The Secretary, in 7 CFR 2.47, has delegated authority under section 331(b) of the Con Act to the Administrator of the RUS, with respect to loans made or guaranteed by RUS.

(b) This subpart sets forth the policy and standards of the Administrator of RUS with respect to the settlement of debts and claims arising from loans made or guaranteed to rural electric borrowers under the RE Act. Nothing in this subpart limits the Administrator's authority under section 12 of the RE Act.

§ 1717.1201 Definitions.

Terms used in this subpart that are not defined in this section have the meanings set forth in 7 CFR part 1710. In addition, for the purposes of this subpart:

Application for debt settlement means a written application containing all of the information required by § 1717.1204(b)(2), in form and substance satisfactory to RUS.

Attorney General means the Attorney General of the United States of America.

Claim means any claim of the government arising from loans made or guaranteed under the RE Act to a rural electric borrower.

Con Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Debt means outstanding debt of a rural electric borrower (including, but not necessarily limited to, principal, accrued interest, penalties, and the government's costs of debt collection) arising from loans made or guaranteed under the RE Act.

Enforced collection procedures means any procedures available to the Administrator for the collection of debt that are authorized by law, in equity, or under the borrower's loan documents or other agreements with RUS.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950b).

Restructure means to settle a debt or claim.

Settle means to reamortize, adjust, compromise, reduce, or charge-off a debt or claim.

§ 1717.1202 General policy.

(a) It is the policy of the Administrator that, wherever possible, all debt owed to the government, including but not limited to principal and interest, shall be collected in full in accordance with the terms of the borrower's loan documents.

(b) Nothing in this subpart by itself modifies, reduces, waives, or eliminates any obligation of a borrower under its loan documents. Any such modifications regarding the debt owed by a borrower may be granted under the authority of the Administrator only by means of the explicit written approval of the Administrator in each case.

(c) The Administrator's authority to settle debts and claims will apply to cases where a borrower is unable to pay its debts and claims in accordance with their terms, as further defined in § 1717.1204(b)(1), and where settlement will maximize, on a present value basis, the recovery of debts and claims owed to the government.

(d) In structuring settlements and determining the capability of the borrower to repay debt and the amount of debt recovery that is possible, the Administrator will consider, among other factors, the RE Act, the National Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776), the policies and regulations of the Federal Energy Regulatory Commission, state legislative and regulatory actions, and other market and nonmarket forces as to their effects on competition in the electric utility industry and on rural electric systems in particular. Other factors the Administrator will consider are set forth in more detail in § 1717.1204.

§ 1717.1203 Relationship between RUS and Department of Justice.

(a) The Attorney General will be notified by the Administrator whenever the Administrator intends to use his or her authority under section 331(b)of the Con Act to settle a debt or claim.

(b) If an outstanding claim has been referred in writing to the Attorney General, the Administrator will not use his or her own authority to settle the claim without the approval of the Attorney General.

(c) If an application for additional debt relief is received from a borrower whose debt has been settled in the past under the authority of the Attorney General, the Administrator will promptly notify the Attorney General before proceeding to consider the application.

§ 1717.1204 Policies and conditions applicable to settlements.

(a) *General.* Settlement of debts and claims shall be subject to the policies, requirements, and conditions set forth in this section and in § 1717.1202.

(b) *Need for debt settlement.* (1) The Administrator will not settle any debt or claim unless the Administrator has determined that the borrower is unable to meet its financial obligations under its loan documents according to the terms of those documents, or that the borrower will not be able to meet said obligations sometime within the period of 24 months following the month the borrower submits its application for debt settlement to RUS, and, in either case, such default is likely to continue indefinitely. The determination of a borrower's ability to meet its financial obligations will be based on analyses and documentation by RUS of the borrower's historical, current, and projected costs, revenues, cash flows, assets, opportunities to reduce costs and/or increase revenues, and other factors that may be relevant on a case by case basis.

(2) In its application to RUS for debt settlement, the borrower must provide, in form and substance satisfactory to RUS, an in-depth analysis supporting the borrower's contention that it is unable or will not be able to meet its financial obligations as described in paragraph (b)(1) of this section. The analysis must include:

(i) An explanation and analysis of the causes of the borrower's inability to meet its financial obligations;

(ii) A thorough review and analysis of the opportunities available or potentially available to the borrower to reduce administrative overhead and other costs, improve efficiency and effectiveness, and expand markets and revenues, including but not limited to opportunities for sharing services, merging, and/or consolidating, raising rates when appropriate, and renegotiating supplier and service contracts. In the case of a power supply borrower, the study shall include such opportunities among the members of the borrower, unless the Administrator waives this requirement;

(iii) Documentation of the actions taken, in progress, or planned by the borrower (and its member systems, if applicable) to take advantage of the opportunities cited in paragraph (b)(2)(ii) of this section; and

(iv) Other analyses and documentation prescribed by RUS on a case by case basis.

(3) RUS may require that an independent consultant provide an analysis of the efficiency and

effectiveness of the borrower's organization and operations, and those of its member systems in the case of a power supply borrower. The following conditions will apply:

(i) RUS will select the independent consultant taking into account, among other matters, the consultant's experience and expertise in matters relating to electric utility operations, finance, and restructuring;

(ii) The contract with the consultant shall be to provide services to RUS on such terms and conditions as RUS deems appropriate. The consultant's scope of work may include, but shall not be limited to, an analysis of the following:

(A) How to maximize the value of the government's collateral, such as through mergers, consolidations, or sales of all or part of the collateral;

(B) The viability of the borrower's system, taking into account such matters as system size, service territory and markets, asset base, physical condition of the plant, operating efficiency, competitive pressures, industry trends, and opportunities to expand markets and improve efficiency and effectiveness;

(C) The feasibility and the potential benefits and risks to the borrower and the government of corporate restructuring, including aggregation and disaggregation;

(D) In the case of a power supply borrower, the retail rate mark-up by member systems and the potential benefits to be achieved by member restructuring through mergers, consolidations, shared services, and other alliances;

(E) The quality of the borrower's management, management advisors, consultants, and staff;

(F) Opportunities for reducing overhead and other costs, for expanding markets and revenues, and for improving the borrower's existing and prospective contractual arrangements for the purchase and sale of power, procurement of supplies and services, and the operation of plant and facilities;

(G) Opportunities to achieve efficiency gains and increased revenues based on comparisons with benchmark electric utilities; and

(H) The accuracy and completeness of the borrower's analysis provided under paragraph (b)(2) of this section;

(iii) RUS and, as appropriate, other creditors, will determine the extent to which the borrower and third parties (including the members of a power supply borrower) will be required to participate in funding the costs of the independent consultant;

(iv) The borrower will be required to make available to the consultant all corporate documents, files, and records, and to provide the consultant with access to key employees. The borrower will also normally be required to provide the consultant with office space convenient to the borrower's operations and records; and

(v) All analyses, studies, opinions, memoranda, and other documents and information produced by the independent consultant shall be provided to RUS on a confidential basis for consideration in evaluating the borrower's application for debt settlement. Such documents and information may be made available to the borrower and other appropriate parties if authorized in writing by RUS.

(4) The borrower may be required to employ a temporary or permanent manager acceptable to the Administrator, to manage the borrower's operations to ensure that all actions are taken to avoid or minimize the need for debt settlement. The employment could be on a temporary basis to manage the system during the time the debt settlement is being considered, and possibly for some time after any debt settlement, or it could be on a permanent basis.

(5) The borrower must submit, at a time determined by RUS, a resolution of its board of directors requesting debt settlement and stating that the borrower is either currently unable to meet its financial obligations to the government or will not be able to meet said obligations sometime within the next 24 months, and that, in either case, the default is likely to continue indefinitely.

(c) *Debt settlement measures.* (1) If the Administrator determines that debt settlement is appropriate, the debt settlement measures the Administrator will consider under this subpart with respect to direct, insured, or guaranteed loans include, but are not limited to, the following:

(i) Reamortization of debt;

(ii) Extension of debt maturity, provided that the maturity of the borrower's outstanding debt after settlement shall not extend more than 10 years beyond the latest maturity date prior to settlement;

(iii) Reduction of the interest rate charged on the borrower's debt, provided that the interest rate on any portion of the restructured debt shall not be reduced to less than 5 percent, unless the Administrator determines that reducing the rate below 5 percent would maximize debt recovery by the government;

(iv) Forgiveness of interest accrued, penalties, and costs incurred by the government to collect the debt; and

(v) With the concurrence of the Under Secretary for Rural Development, forgiveness of loan principal.

(2) In the event that RUS has, under section 306 of the RE Act, guaranteed loans made by the Federal Financing Bank or other third parties, the Administrator may restructure the borrower's obligations by: acquiring and restructuring the guaranteed loan; restructuring the loan guarantee obligation; restructuring the borrower's reimbursement obligations; or by such means as the Administrator deems appropriate, subject to such consents and approvals, if any, that may be required by the third party lender.

(d) *Borrower's obligations to other creditors.* The Administrator will not grant relief on debt owed to the government unless similar relief, on a pro rata basis, is granted with respect to other secured obligations of the borrower, or the other secured creditors provide other benefits or value to the debt restructuring. Unsecured creditors will also be expected to contribute to the restructuring. If it is not possible to obtain the expected contributions from other creditors, the Administrator may proceed to settle a borrower's debt if that will maximize recovery by the government and will not result in material benefits accruing to other creditors at the expense of the government.

(e) *Competitive bids for system assets.* If requested by RUS, the borrower or the independent consultant provided for in paragraph (b)(3) of this section shall solicit competitive bids from potential buyers of the borrower's system or parts thereof. The bidding process must be conducted in consultation with RUS and use standards and procedures acceptable to RUS. The Administrator may use the competitive bids received as a basis for requiring the sale of all or part of the borrower's system as a condition of settlement of the borrower's debt. The Administrator may also consider the bids in evaluating alternative settlement measures.

(f) *Valuation of system.* (1) The Administrator will consider the value of the borrower's system, including, in the case of a power supply borrower, the wholesale power contracts between the borrower and its member systems. The valuation of the wholesale power contracts shall take into account, among other matters, the rights of the government and/or third parties, to assume the rights and obligations of the borrower under such contracts, to charge reasonable rates for service

provided under the contracts, and to otherwise enforce the contracts in accordance with their terms. In no case will the Administrator settle a debt or claim for less than the value (after considering the government's collection costs) of the borrower's system and other collateral securing the debt or claim.

(2) RUS may use such methods, analyses, and assessments as the Administrator deems appropriate to determine the value of the borrower's system.

(g) *Rates.* The Administrator will consider the rates charged for electric service by the borrower and, in the case of a power supply borrower, by its members, taking into account, among other factors, the practices of the Federal Energy Regulatory Commission (FERC), as adapted to the cooperative structure of borrowers, and, where applicable, FERC treatment of any investments by co-owners in projects jointly owned by the borrower.

(h) *Collection action.* The Administrator will consider whether a settlement is favorable to the government in comparison with the amount that can be recovered by enforced collection procedures.

(i) *Regulatory approvals.* Before the Administrator will approve a settlement, the borrower must provide satisfactory evidence that it has obtained all approvals required of regulatory bodies that the Administrator determines are needed to implement rates or other provisions of the settlement, or that are needed in any other way for the borrower to fulfill its obligations under the settlement.

(j) *Conditions regarding management and operations.* As a condition of debt settlement, the borrower, and in the case of a power supply borrower, its members, will be required to implement those changes in structure, management, operations, and performance deemed necessary by the Administrator. Those changes may include, but are not limited to, the following:

(1) The borrower may be required to undertake a corporate restructuring and/or sell a portion of its plant, facilities, or other assets

(2) The borrower may be required to replace senior management and/or hire outside experts acceptable to the Administrator. Such changes may include a commitment by the borrower's board of directors to restructure and/or obtain new membership to improve board oversight and leadership;

(3) The borrower may be required to agree to:

(i) Controls by RUS on the general funds of the borrower, as well as on any investments, loans or guarantees by the borrower, notwithstanding any limitations on RUS' control rights in the borrower's loan documents or RUS regulations; and

(ii) Requirements deemed necessary by RUS to perfect and protect its lien on cash deposits, securities, equipment, vehicles, and other items of real or non-real property; and

(4) In the case of a power supply borrower, the borrower may be required to obtain credit support from its member systems, as well as pledges and action plans by the members to change their operations, management, and organizational structure (e.g., shared services, mergers, or consolidations) in order to reduce operating costs, improve efficiency, and/or expand markets and revenues.

(k) *Conveyance of assets.* As a condition of a settlement, a borrower may be required to convey some or all its assets to the government.

(l) *Additional conditions.* The borrower will be required to warrant and agree that no bonuses or similar extraordinary compensation has been or will be provided, for reasons related to the settlement of government debt, to any officer or employee of the borrower or to other persons or entities identified by RUS. The Administrator may impose such other terms and conditions of debt settlement as the Administrator determines to be in the government's interests.

(m) *Certification of accuracy.* Before the Administrator will approve a debt settlement, the manager or other appropriate official of the borrower must certify that all information provided to the government by the borrower or by any agent of the borrower, in connection with the debt settlement, is true, correct, and complete in all material respects.

§ 1717.1205 Waiver of existing conditions on borrowers.

Pursuant to section 331(b) of the Con Act, the Administrator, at his or her sole discretion, may waive or otherwise reduce conditions and requirements imposed on a borrower by its loan documents if the Administrator determines that such action will contribute to enhancement of the government's recovery of debt. Such waivers or reductions in conditions and requirements under this section shall not include the exercise of any of the debt settlement measures set forth in § 1717.1204(c), which are subject to all of the requirements of said § 1717.1204.

§ 1717.1206 Loans subsequent to settlement.

In considering any future loan requests from a borrower whose debt has been settled in whole or in part (including the surviving entity of merged or consolidated borrowers, where at least one of said borrowers had its debts settled), it will be presumed that credit support for the full amount of the requested loan will be required. Such support may be in a number of forms, provided that they are acceptable to the Administrator on a case by case basis. They may include, but need not be limited to, equity infusions and guarantees of debt repayment, either from the applicant's members (in the case of a power supply borrower), or from a third party.

§ 1717.1207 RUS obligations under loan guarantees.

Nothing in this subpart affects the obligations of RUS under loan guarantee commitments it has made to the Federal Financing Bank or other lenders.

§ 1717.1208 Government's rights under loan documents.

Nothing in this subpart limits, modifies, or otherwise affects the rights of the government under loan documents executed with borrowers, or under law or equity.

Dated: September 19, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–25315 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–141; Special Conditions No. 25–ANM–132]

Special Conditions: Boeing Model 737–600/–700/–800; High Intensity Radiated Fields (HIRF)/Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 737–600/–700/–800 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level

of safety equivalent to that provided by the existing airworthiness standards.

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Gregory Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 1993, Boeing submitted an application for an amendment to Type Certificate A16WE to include the next generation 737 family of airplanes. Two of these airplanes will have the same length as the present 737–300 and 737–500. The third version will be the existing 737–400, stretched to add two additional passenger rows. In addition, all models will have increased wing size, higher thrust engines, and body structure modifications due to increased design weights and higher wing and tail loads. The maximum operating altitude is to be increased from 37,000 ft. to 41,000 ft. The long range cruise speed is increased to 0.78 Mach or better. The range is increased to be transcontinental of approximately 2,950 nmi. There is only one engine type being offered, which is a derivative of the existing CFM56 referred to as the CFM56–7.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Boeing must show that the Model 737–600/–700/–800 airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate A16WE, or the applicable regulations in effect on the date of application for the change to the Model 737. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Model 737–600/–700/–800 airplanes includes 14 CFR part 25, as amended by Amendments 25–1 through 25–77, except as indicated below:

Section No.	Title	At amdt. 25–
25.365	Pressurized Compartment Loads.	0
25.561	Emergency Landing Conditions—General.	0
25.562	Emergency Landing Dynamic Conditions.	*64
25.571	Damage-tolerance and Fatigue Evaluation of Structure.	**0,77
25.607	Fasteners	**0,77
25.631	Bird Strike Damage.	**0,77
25.699	Lift and Drag Device Indicator.	**0,77
25.783(f)	Doors	**15,77
25.807(c)(3)	Emergency Exits	15
25.813	Emergency Exit Access.	45
25.832	Cabin Ozone Concentration.	***0,77
25.1309	Equipment, Systems and Installations.	**0,77
25.1419(c)	Ice Protection	**23,77

Boeing has also elected to comply with Amendments 25–78 and 25–80 and portions of Amendments 25–79, 25–84, and 25–86.

*Flight attendants seats will be qualified to Technical Standard Order C127. Passenger and flight deck seats will comply with 14 CFR 25.562 (a),(b),((c)(1),(2),(3),(4),(7), and (8)).

**Applicable to new and significantly modified structure and systems and portions of the airplane affected by these changes. Where two amendment levels are shown for the same paragraph, the number without the asterisks (*) applies to structures, systems, and portions of the airplane which are not new or significantly modified. The structure, systems, and components which comply with the later amendment will be identified in Boeing document D010A001, approved by the FAA and JAA, and referenced on the type certificate data sheet.

***Boeing provides FAA approved data (Document number D6–49779) to 737 operators to enable the operators to show ozone compliance per 14 CFR 121.578 for their specific route structures.

Amendment level ''0'' is the original published version of Part 25 (February 1, 1965).

In addition, the certification basis will be upgraded to include the Part 25 complement to any Part 121 amendments adopted prior to the certification date and having impact on transport category airplane type designs, and these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–600/–700/–800 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 737–600/–700/–800 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by 14 CFR 11.28 and 11.29, and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

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

Novel or Unusual Design Features

The Boeing Model 737–600/–700/–800 airplanes will incorporate new avionic/electronic systems, such as the Air Data Inertial Reference System (ADIRS) and Common Display System (CDS), that perform critical functions. These systems may be vulnerable to HIRF external to the airplane. In addition, the CFM56–7B engine proposed for the Boeing 737–700 airplane is a high-bypass ratio fan jet engine that will not seize and produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) related to ''sudden engine stoppage.''

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Boeing Model 737–600/–700/–800, which requires that new electrical and electronic systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

For the CFM56–7B engine, the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category

airplanes since 1957. The size, configuration, and failure modes of jet engines has change considerably from those envisioned in 14 CFR 25.361(b) when the engine seizure requirement was first adopted.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards.

The FAA is developing a new regulation and new advisory circular that will provide more comprehensive criteria for treating engine loads resulting from structural failures. In the meantime, a special condition is needed to establish appropriate criteria for the Boeing 737–600/–700/–800 airplanes.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

Limit Engine Torque Loads for Sudden Engine Stoppage

In order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. This special condition distinguishes between the more common events and those rare events resulting from structural failures in the engine. For these more rare but severe events, these criteria allow deformation in the engine supporting structure in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by applying an additional factor on these loads.

Discussion of Comments

Notice of proposed special conditions No. SC–97–3–NM for the Boeing 737–600/–700/–800 airplanes was published in the **Federal Register** on May 14, 1997 (62 FR 26453).

Comments were received from an engine manufacturer who, while supporting the need for the engine torque loads requirements, offers the following comments for consideration.

The commenter recommends that the words ''* * * and that could cause a shutdown due to vibrations'' be removed from paragraph 2(b)(1)(i) of the special conditions. The commenter states that its position is based on a comparison of the proposed special condition with similar work currently underway within the Aviation Rulemaking Advisory Committee (ARAC). The commenter notes differences between these two proposals. For example, the special condition adds a provision that the engine malfunction for limit load calculation be such that it ''could cause a shutdown due to engine vibrations,'' while this provision was removed from the ARAC proposal, whose intent is to address engine events beyond maximum acceleration and other than structural failures, seizures, jamming, and unbalance, such as engine surge. The commenter further notes that the special condition does not explicitly state that the limit torque acts simultaneously with 1g flight loads, although this may be intended.

The FAA recognizes that the ARAC working group is studying this issue and that its final proposal may be different from what has already been applied as a special condition on several airplanes. However, until more definitive criteria have been accepted by industry and by the FAA, the special condition will remain unchanged. The special condition is based on the assumption that the airplane will be subjected to 1g flight loads throughout the engine torque event.

Applicability

As discussed above, these special conditions are applicable to the Model 737–600/–700/–800 airplanes. Should Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Model 737–600/–700/–800 airplanes is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain design features on the Boeing Model 737–600/–700/–800 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737–600/–700/–800 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems

to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

2. *Engine Torque Loads*. In lieu of compliance with § 25.361(b), compliance with the following must be shown:

(b) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by:

(i) sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) the maximum acceleration of the engine.

(2) The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (b)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the adjacent wing and fuselage supporting structure.

Issued in Renton, Washington, on September 17, 1997.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25509 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 95N–0374]

RIN 0910–AA32

Latex Condoms; User Labeling; Expiration Dating

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that requires the labeling of latex condoms to contain an expiration date based upon physical and mechanical testing performed after exposing the product to varying conditions that age latex. Studies show that latex condoms degrade over time. Such degradation has a significant effect on the product's ability to provide a barrier to sexually transmitted diseases (STD's), including human immunodeficiency virus (HIV). This requirement is established in order to provide consumers with essential information regarding the safe use of these products.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–2444.

SUPPLEMENTARY INFORMATION:

I. Background

It is estimated that over 1 million persons in the United States are infected with HIV (Ref. 1). Although nonsexual transmission can occur, HIV is transmitted primarily through sexual contact. With the prevalence of HIV infection and the risk of transmission of other STD's, the importance of the quality of an effective barrier to the transmission of infection is crucial. Because latex membranes, such as condoms and medical gloves, are effective barriers against the spread of various diseases, including hepatitis, HIV, and other STD's (Refs. 2, 4, and 5), the Centers for Disease Control and Prevention and the Surgeon General of the Public Health Service have recommended that latex condoms be used according to instructions with every act of intercourse for maximum protection against STD's (Ref. 3).

The effectiveness of latex condoms as a barrier, however, is dependent upon the integrity of the latex material. Degradation of latex film products (e.g., the embrittlement of the latex film, an increase in the porosity of the membrane, or other loss of physical properties) occurs when latex is exposed to various types of environmental conditions (such as elevated temperature, fluorescent lights, or ozone) normally experienced in product use, shipment, or storage conditions. Exposure to these environmental conditions degrade the film progressively over time and may result in bursts, rips, tears, or seepages that allow the transmission of disease.

To understand the effects of aging and other storage conditions on latex properties, the State of Washington's Board of Pharmacy initiated an FDA-sponsored study of the material integrity of latex condoms (the FDA/Washington study) in July of 1989 (Ref. 6). At the laboratories of the FDA/Washington study, packaged and unpackaged latex condoms were exposed to 20 and 30 °C (representing room temperature) for up to 5 years. In order to represent exposure to the upper extreme of environmental temperatures, condoms were exposed for 100 days to a temperature of 45 °C. Also, to accelerate the aging process of the latex, condoms were exposed to temperatures of 70 and 85 °C for up to 100 days (Refs. 7 through 9).

The study revealed that exposed condoms (i.e., condoms not protected by packaging) degraded to the point of being unusable within 1 year at room temperature, and at higher temperatures in as little as 10 days. The FDA/Washington study further shows that latex condoms stored in intact plastic packages also degrade over time, though at a much slower rate. The results of the FDA/Washington study demonstrate that aging and other conditions can significantly affect the integrity, strength, and quality of latex essential to maintaining a barrier against the transmission of disease.

Based upon these findings, using standards established by the American Society for Testing and Materials (ASTM), and following meetings with condom manufacturers, the agency published in the **Federal Register** of May 24, 1996 (61 FR 26140), a proposed rule that would require latex condoms to be labeled with an expiration date. Specifically, FDA proposed that, to ensure visibility of the expiration date by customers, an expiration date must appear on the primary packaging (i.e., the individual package), as well as higher levels of labeling, such as the case containing individually packaged products.

To establish the expiration date, FDA proposed that a manufacturer, before performing tests on products that demonstrate physical and mechanical integrity of the product, subject products from three discrete and random lots to each of the following conditions: (1) Storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days; (2) storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 40 to 50 °C (plus or minus

2 °C) for 90 days; and (3) storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 15 to 30 °C for the stated shelf life of the product.

If the latex barrier properties are adequate (i.e., pass the manufacturer's physical and mechanical integrity tests) after undergoing the 70 °C/7-day and 40 to 50 °C/90-day tests, the proposal provided for that product to be labeled with an expiration date of up to 5 years. If the product, after storage at either 7- or 90-day test conditions, fails to meet the manufacturer's physical or mechanical integrity tests, the labeled shelf life of the product would be required to be demonstrated by real-time storage data at 15 to 30 °C. Products that pass the 7- and 90-day test conditions would be required to undergo confirmation tests after the product has been stored at 15 to 30 °C for the stated shelf life. If the product fails the 15 to 30 °C confirmation test, the product would be required to be relabeled to represent the actual shelf life supported by real time data.

This final rule incorporates the principles described in the proposed rule and requires latex condoms to bear expiration dates after being subjected to appropriate testing. When a labeling change is made to comply with this rule, products currently cleared for marketing would not be required to submit a new 510(k). FDA will modify agency guidance to reflect this policy. Of course, latex condom products that have not been cleared for marketing are still required to submit to FDA a 510(k) premarket notification.

II. Summary of Comments

The agency received only three comments on the proposed rule, two of which addressed the economic impact of the rule, but not its content. The remaining comment, submitted by a trade association, was generally supportive of the proposed rule but raised several issues warranting further consideration.

A. General

1. The comment stated that the proposed rule did not distinguish between the testing requirements applicable to new products as opposed to currently marketed products. The comment suggests that some currently marketed products may already be labeled with an expiration date that has been cleared by the agency. To require these products to undergo testing following accelerated and intermediate aging would be unnecessarily redundant if the existing cleared expiration date has been established by real time testing.

The agency agrees that, where a product bears an expiration date based on appropriate integrity tests following storage in real time, accelerated aging and testing are redundant and should not be required. This position is reflected in the final rule that has been modified accordingly in new § 801.435(f).

The agency stresses that testing data supporting an expiration date must be available for inspection by the agency, regardless of whether the agency previously cleared product labeling which bears an expiration date. If such data is not available for inspection, the manufacturer must generate shelf life data with accelerated and real time storage and testing.

2. The comment suggested that the introductory paragraph of proposed § 801.435(d) be modified to read,

> ''The expiration date must be supported by the data from reasonable quality control tests demonstrating the physical and mechanical integrity of the product after three discrete and typical lots of the product have been subjected to each of the following conditions.'' (Emphasis added.)

The language in the proposed rule stated, ''* * * after three discrete and random lots of the same product have been subjected to each of the following conditions.'' (Emphasis added.)

The agency recognizes that manufacturers of new products, or new formulations, may not have produced a sufficient number of lots to allow a truly random selection for testing. The purpose of selecting random lots is to ensure that the tests are conducted on products that are representative of the products being produced. The word ''representative'' is more commonly used in the context of sampling analyses than its synonym, ''typical.'' The agency believes the comment that suggested substituting the word ''typical'' for ''random'' is appropriately addressed by substituting the word ''representative'' for the word ''random.'' The final regulation has been modified accordingly.

The agency also recognizes that the proposed requirement to conduct testing on lots of the same product needs further clarification in light of the agency's October 1989 ''General Guidance for Modifying Condom Labeling to Include Shelf Life,'' that states that shelf life data may not be needed for each variation from a ''standard'' condom. The agency continues to consider its October 1989 guidance to be an accurate statement of agency policy. FDA recognizes that a manufacturer may produce several variations of a tested condom, including variations of packaging, design (e.g., texture, thickness, etc.), latex formulation (including color additives), dusting powders, spermicides, desensitizers, and lubricants. As stated in the agency guidance, ''FDA recognizes that some variations may not warrant separate shelf life testing.'' Certain variations, however, may affect condom strength, integrity, and even response to environmental factors in a variety of ways. Therefore, the regulation has been revised to state in § 801.435(g) that, if a manufacturer applies shelf life data to a variation of the tested condom, the manufacturer must document and provide upon request appropriate justification.

3. The comment stated that the requirement that the condoms to be tested be stored unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged, before packaging, storage, and testing, is unnecessary and overly burdensome. The comment states that this provision would require manufacturers to develop new data for holding periods with respect to products that are currently labeled with approved expiration dating.

The agency disagrees that this provision is unnecessary and overly burdensome. Degradation of latex films is cumulative. Shelf life data derived from a lot of condoms that were packaged the day following production may not necessarily be applicable to the same product that is left unpackaged for 180 days. In requiring a manufacturer to conduct tests on products that have been stored unpackaged for the maximum time the manufacturer allows the product to remain unpackaged, the agency is ensuring that the integrity of the tested products would be representative of the products receiving the greatest exposure to environmental conditions. Thus, shelf life data generated by testing these products could be applied with the greatest confidence.

As discussed in comment 1 in section II.A of this document, the agency believes that currently cleared expiration dates that have been determined by real time testing of the product may continue to be applied. In the event this real time testing did not account for time periods products remain unpackaged, however, manufacturers would be required to perform confirmation testing to account for maximum holding periods for their products that are already labeled with an expiration date. This testing will be initiated by the effective date of the

regulation. Until the confirmation tests are completed, the previously cleared products may remain on the market labeled with the expiration date based on previous real time testing. The regulation has been modified in § 801.435(f) to clarify this issue.

4. The comment objected to the requirement that new premarket notification submissions, required under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), for latex condoms should include data to establish labeled expiration dates, especially in light of the agency's allowance that such data need only be held as part of the manufacturing records for currently marketed products. This comment suggested that new 510(k) submissions only be required to state the claimed expiration dating period, and identify whether it has been tentatively established through accelerated aging or established under real time conditions consistent with the requirements of § 801.435.

The agency agrees with this comment. The agency believes that a 510(k) submission that includes statements that appropriate tests were performed and that the condoms passed appropriate mechanical and physical integrity tests should not generally have to include underlying test data. FDA intends to revise its existing guidance on 510(k) submissions for latex condoms to reflect its position that underlying data for expiration dating should not be submitted. All shelf life data generated under the requirements of this final rule shall be retained in each company's files, as required by § 820.180 (21 CFR 820.180), and shall be made available upon request for inspection by FDA.

5. The comment requests that the agency draw a clear distinction in the regulation between closed-ended latex condoms, that are used for prevention of STD transmission and pregnancy, and open-ended condom catheters that are used for continence and chronic care.

The agency confirms that the rule does not apply to open-ended condom catheters. The agency, however, does not believe that the regulation requires any modification to clarify this issue. As proposed and finalized, the regulation states that ''this section applies to the subset of condoms as identified in § 884.5300, and condoms with spermicidal lubricant as identified in § 884.5310 of this chapter, which products are formed from latex films.'' Sections 884.5300 and 884.5310 (21 CFR 884.5300 and 884.5310) specifically describe the intended uses of closed ended condoms. The regulation, therefore, clearly establishes that open-ended condom catheters are not subject to this rule.

Moreover, in order to avoid future confusion, the agency is taking this opportunity to clarify the fact that this rule does not apply to female condoms. Female condoms are distinguished from the products identified in the scope of this rule in two significant details: (1) Sections 884.5300 and 884.5310 do not describe female condoms, and (2) female condoms are formed from polyurethane, not latex.

6. The agency is also taking this opportunity to clarify its position regarding latex condoms that are sold with spermicidal lubricants. Such products are currently cleared for marketing provided they bear labeling that reflects expiration dates and statements relating to the spermicidal agents. On August 9, 1982, in response to a petition by Schmidt Laboratories, Inc., FDA issued an order reclassifying a condom with a spermicidal lubricant (nonoxyl-9) from class III to class II. In the preamble to the final rule published in the **Federal Register** of October 29, 1982 (47 FR 49021), which reclassified generic condoms with spermicidal lubricants into class II, FDA advised that the generic device was reclassified into class II only insofar as its labeling bore an expiration date for the spermicidal agent and the following statement ''The expiration date on this product applies only to the spermicidal agent in it.''

Because the effectiveness of condoms with spermicidal lubricants depends on both the integrity of the latex and the stability of the spermicide, the expiration date should warn against use of the product after a date that either the spermicide or the latex could be ineffective. FDA is advising that it would consider a condom with spermicidal lubricant that bears the earlier expiration date that is related to the condom's latex or spermicidal properties, substantially equivalent to a class II condom with spermicidal lubricant under § 884.5310.

FDA has added § 801.435(h) to the final rule to state that if a latex condom contains spermicide, and the expiration date based upon spermicidal stability testing is different from the expiration date based on latex integrity testing, the product shall bear only the earlier expiration date. Accordingly, the statement required by the August 9, 1982, Reclassification Order that ''The expiration date on this product applies only to the spermicidal agent in it'' would be incorrect and shall not appear on the labeling of latex condoms with spermicidal lubricants following the effective date of this regulation. Any labeling changes to comply with § 801.435(h) will not require the filing of a new 510(k).

This regulation does not impose new testing requirements to determine expiration dates based upon spermicide stability. Manufacturers should continue to perform the appropriate tests to determine spermicide amount and biological activity that have supported the expiration dating for the spermicide in the past.

B. Comments on the Economic Impact

7. The agency received two comments addressing the economic impact of the proposed rule. One comment stated that the agency significantly underestimated the cost burden of establishing an expiration date for latex condoms because, in order to accurately establish shelf life data, a manufacturer would need to test packaging integrity, packaging material, and lubricants used, as well as latex compound integrity.

The agency disagrees. The testing requirements in the proposed and final rules would provide shelf life data based upon the aggregate effect of the factors identified by the comment. The agency believes that no real purpose would be served by additionally requiring the suggested tests.

8. One comment suggested that requiring manufacturers of new products to submit shelf life data with their 510(k) submissions subjects manufacturers of those products to an additional administrative burden that is unnecessarily restrictive and may delay the public access to new and improved products.

As discussed in comment 4 in section II.A of this document, the agency has revised its position and is not requiring that manufacturers submit shelf life data with their 510(k) submissions. Instead, shelf life data shall be retained in each company's files, as required by § 820.180, and shall be made available upon request for inspection by FDA.

C. Comments on the Estimated Recordkeeping Burden

9. One comment stated that the agency significantly underestimated the recordkeeping burden that would be created by shelf life testing. The comment stated that the number of condom variations that would require testing is much higher than estimated, however, no guidance was given for estimating the number more accurately. The comment also stated that the industry practice in gathering real time testing data is to test the product each year. That is, instead of testing the product at 0 days, 7 days (accelerated

aging), 90 days (intermediate aging), and 5 years (real time) as discussed in the paperwork burden section of the proposed rule (61 FR 26140 at 26143), manufacturers would actually be testing at 0 days, 7 days, 90 days, 1 year, 2 years, 3 years, 4 years, and 5 years. This would represent a doubling of the testing burden for each product over the course of 5 years.

The agency agrees that the testing of products in intermediate years 1, 2, 3, and 4 is an appropriate and customary method of gathering real time shelf life data. This would be reflected in the burden chart as a doubling of the estimated burden. However, in response to other comments, the agency has required manufacturers of latex condoms that already have expiration dating data, based on real time testing, to do only a confirmation test, as appropriate. These products would be required to be tested only once in 5 years. The Paperwork Reduction Act analysis is modified to address these changes in testing frequency.

Moreover, the agency has adjusted the Paperwork Reduction statement to address the comment stating that manufacturers would be required to collect expiration dating data for more than one variation of a standard condom. The agency has attributed an average of two variations that would require testing for each standard condom considered in its original estimate. Furthermore, the agency has provided that manufacturers may apply expiration dating data collected on a standard to a variation of the standard, provided the manufacturer documents its justification. The burden estimates have been modified to reflect the cost of such documentation.

The Paperwork Reduction Act analysis is further modified to annualize the cost of shelf life testing over 5 years. Whereas the proposed Paperwork Reduction Act analysis reflected an annual burden of testing products at 0 days, 7 days, 90 days, and 5 years, the agency has determined that it would be more appropriate to consider the testing of products at 0 days, 7 days, 90 days, 1 year, 2 years, 3 years, 4 years, and 5 years, as a burden spread out over the 5 years it would take to complete the tests.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by Subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This regulation requires physical and mechanical integrity tests. Because condom manufacturers routinely conduct such tests on their products as part of their quality control practices, the required testing would affect manufacturers primarily by establishing storage conditions prior to testing such products, and increasing sampling sizes subjected to testing. This rule also requires a labeling change. However, the 180-day time period between the publication date and effective date of this rule will allow most manufacturers to exhaust their existing supply of labels. Accordingly, the agency certifies that the final rule will not have a significant economic impact on small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collections are shown below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Labeling Requirements for Latex Condoms—Expiration Date Labeling.

Description: These information collection requirements apply to manufacturers of latex condoms. This rule expands the labeling of latex condoms to include an expiration date. The expiration date must be supported by data from quality control tests demonstrating physical and mechanical integrity of three sample lots of the product being tested that were stored under accelerated and real time aging conditions. Quality control testing under accelerated aging conditions must include tests of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by: (1) Storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days; (2) storage of the packaged product at a selected temperature between 40 and 50 °C (plus or minus 2 °C) for 90 days; and (3) storage of the packaged product at a monitored or controlled temperature between 15 and 30 °C for the lifetime of the product (up to 5 years). Manufacturers who already have shelf life data based upon real time testing are not required to perform the 7-day and 90-day accelerated aging testing.

The recording of shelf life testing by condom manufacturers is used to support the inclusion of expiration dating on the labeling of latex condoms. Information concerning latex condom shelf life is necessary to allow lay users to use these products safely by avoiding use of products that have degraded. The effectiveness of latex condoms as a barrier is dependent upon the integrity of the latex material. The shelf life of latex condoms is material information that consumers need in order to safely use the product.

Condom manufacturers will use the information collected from the testing to establish the expiration date to be printed on the labeling, and purchasers will use the information collected to determine the likely effectiveness of the product.

Section 510(h) of the act, requires that condom manufacturers, as device manufacturers, be inspected at least once in a 2-year period. During that inspection, FDA inspectors will review the test records used to support the expiration date in order to ensure that the expiration date is accurate.

Description of Respondents: Businesses or other for profit organizations.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Capital Costs	Total Operating and Maintenance Costs
801.435(d)	58	1	58	96	5,568	$1,856[1]	$94,655[2]

[1] Capital costs are one time start-up costs and consist of a revision of policies and procedures. These costs have been annualized over a period of 5 years.

[2] The annual burden reported here represents the recordkeeping burden of testing a product of 0 days, 7 days, 90 days, 1 year, 2 years, 3 years, 4 years, and 5 years. The cost of this burden is annualized over the 5-year period required to conduct all the necessary testing.

The agency received one comment on the Paperwork Reduction Act statement of the proposed rule. As discussed in comment 9 in section II.C of this document, the agency has adjusted the estimated burden according to the suggestions made by the comment. The revised estimated burden has been adjusted to include the burden of testing a product at intermediate years during real time aging, and the burden of testing more than one variation on a standard condom. The revised estimated burden reflects a burden annualized over the 5 years required to perform all necessary testing.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements which have been submitted to OMB for approval. FDA will publish a notice in the **Federal Register** prior to the effective date of this final rule of OMB's decision to approve, modify, or disapprove the information collection requirements.

VI. References

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

1. Center for Disease Control and Prevention, ''HIV Prevalence Estimates and AIDS Case Projections for The United States: Report Based Upon a Workshop,'' *Morbidity and Mortality Weekly Report*, vol. 39/No. RR–16, November 30, 1990.

2. Conference on Latex as a Barrier Material, University of Maryland, (sponsored by FDA), May 1989.

3. Center for Disease Control and Prevention, ''Update: Barrier Protection Against HIV Infection and Other Sexually Transmitted Diseases,'' *Morbidity and Mortality Weekly Report*, vol. 42/No. 30, August 6, 1993.

4. DeVincenzi, L., European Study Group on Heterosexual Transmission of HIV, Heterosexual Transmission of HIV in a European Cohort of Couples (abstract No. WS–CO2–1), vol. 1, IXth International Conference on AIDS/IVth STD World Congress, Berlin, 83, June 9, 1993.

5. Saracco, A., M. Musicco, A. Nicolosi, et al., ''Man-to-Woman Sexual Transmission of HIV: Longitudinal Study of 343 Steady Partners of Infected Men,'' *Journal of Acquired Immune Deficiency Syndrome*, 6:497–502, 1993.

6. Final Report: Lubricated Latex Condoms—Study of the Effects of Environmental Parameters on Deterioration: Program for Appropriate Technology in Health (PATH), FDA Contract No. 223–88–4285, October 1993.

7. Mandel, J. et al., ''Measurement of the Aging of Rubber Vulcanizates,'' *Journal of Research of the National Bureau of Standards*, vol. 63C, No. 2, October–December, 1959.

8. Barker, L. R., ''Accelerated and Long-Term Ageing of Natural Rubber Vulcanizates,'' *Journal of Natural Rubber Research*, vol. 2, No. 4, pp. 201–213, 1987.

9. Barker, L. R., ''Accelerated Long-Term Ageing of Natural Rubber Vulcanizates, Part 2: Results From Aging Tests at 40 C,'' *Journal of Natural Rubber Research*, vol. 5, No. 3, pp. 266–274, 1990.

10. ASTM D 3492, Standard Specification for Rubber Contraceptives (Condoms), American Society for Testing and Materials, Philadelphia, PA.

11. ''General Guidance for Modifying Condom Labeling to Include Shelf Life,'' FDA Guidance Document.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. New § 801.435 is added to subpart H to read as follows:

§ 801.435 User labeling for latex condoms.

(a) This section applies to the subset of condoms as identified in § 884.5300 of this chapter, and condoms with spermicidal lubricant as identified in § 884.5310 of this chapter, which products are formed from latex films.

(b) Data show that the material integrity of latex condoms degrade over time. To protect the public health and minimize the risk of device failure, latex condoms must bear an expiration date which is supported by testing as described in paragraphs (d) and (h) of this section.

(c) The expiration date, as demonstrated by testing procedures required by paragraphs (d) and (h) of this section, must be displayed prominently and legibly on the primary packaging (i.e., individual package), and higher levels of packaging (e.g., boxes of condoms), in order to ensure visibility of the expiration date by consumers.

(d) Except as provided under paragraph (f) of this section, the expiration date must be supported by data demonstrating physical and mechanical integrity of the product after three discrete and representative lots of the product have been subjected to each of the following conditions:

(1) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days;

(2) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a selected temperature between 40 and 50 °C (plus or minus 2 °C) for 90 days; and

(3) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a monitored or controlled temperature between 15 and 30 °C for the lifetime of the product (real time storage).

(e) If a product fails the physical and mechanical integrity tests commonly used by industry after the completion of the accelerated storage tests described in paragraphs (d)(1) and (d)(2) of this section, the product expiration date must be demonstrated by real time storage conditions described in paragraph (d)(3) of this section. If all of the products tested after storage at temperatures as described in paragraphs (d)(1) and (d)(2) of this section pass the manufacturer's physical and mechanical

integrity tests, the manufacturer may label the product with an expiration date of up to 5 years from the date of product packaging. If the extrapolated expiration date under paragraphs (d)(1) and (d)(2) of this section is used, the labeled expiration date must be confirmed by physical and mechanical integrity tests performed at the end of the stated expiration period as described in paragraph (d)(3) of this section. If the data from tests following real time storage described in paragraph (d)(3) of this section fails to confirm the extrapolated expiration date, the manufacturer must, at that time, relabel the product to reflect the actual shelf life.

(f) Products that already have established shelf life data based upon real time storage and testing and have such storage and testing data available for inspection are not required to confirm such data using accelerated and intermediate aging data described in paragraphs (d)(1) and (d)(2) of this section. If, however, such real time expiration dates were based upon testing of products that were not first left unpackaged for the maximum amount of time as described in paragraph (d)(3) of this section, the real time testing must be confirmed by testing products consistent with the requirements of paragraph (d)(3) of this section. This testing shall be initiated no later than the effective date of this regulation. Until the confirmation testing in accordance with paragraph (d)(3) of this section is completed, the product may remain on the market labeled with the expiration date based upon previous real time testing.

(g) If a manufacturer uses testing data from one product to support expiration dating on any variation of that product, the manufacturer must document and provide, upon request, an appropriate justification for the application of the testing data to the variation of the tested product.

(h) If a latex condom contains a spermicide, and the expiration date based on spermicidal stability testing is different from the expiration date based upon latex integrity testing, the product shall bear only the earlier expiration date.

(i) The time period upon which the expiration date is based shall start with the date of packaging.

(j) As provided in part 820 of this chapter, all testing data must be retained in each company's files, and shall be made available upon request for inspection by the Food and Drug Administration.

(k) Any latex condom not labeled with an expiration date as required by paragraph (c) of this section, and initially delivered for introduction into interstate commerce after the effective date of this regulation is misbranded under sections 201(n) and 502(a) and (f) of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n) and 352(a) and (f)).

Dated: August 20, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–25587 Filed 9-25-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8731]

RIN 1545–AU92

Section 42(d)(5) Federal Grants

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations with respect to the low-income housing tax credit relating to the application of section 42(d)(5) to certain rental assistance programs under section 42(g)(2)(B)(i). The regulations clarify that certain types of federal rental assistance payments do not result in a reduction in the eligible basis of a low-income housing building.

DATES: These regulations are effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson, (202) 622–3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations (TD 8713) and a notice of proposed rulemaking cross-referencing the temporary regulations were published in the **Federal Register** for January 27, 1997 (62 FR 3792, 3848). Those regulations provide that certain federal rental assistance payments made to the owner of a building on behalf of low-income tenants are not federal grants with respect to a building or its operation that require a reduction in the building's eligible basis under section 42(d)(5) of the Internal Revenue Code (Code). These payments include rental assistance payments made under section 8 of the United States Housing Act of 1937 (Act) (42 U.S.C. 1437f), certain payments made under section 9 of the Act (42 U.S.C. 1437g), and payments made under such other programs or methods of rental assistance as may be designated in the **Federal Register** or the Internal Revenue Bulletin. The notice of proposed rulemaking indicated that comments would be considered on those areas addressed in the temporary regulations. Written comments responding to the notice of proposed rulemaking were received. There was no request for a public hearing, and no public hearing was held. After consideration of all the written comments, the proposed regulations have been adopted, without change, by this Treasury decision.

Summary of Comments

One commenter suggested that the final regulations provide additional guidance for state agencies to use in determining whether similar programs beyond those described in the regulations should be considered grants that cause a reduction in a building's eligible basis under section 42(d)(5) of the Code. The final regulations do not adopt this suggestion. The scope of this regulation is limited to specified rental assistance payments that are not grants requiring a reduction in a building's eligible basis and any additional payments the Secretary may designate in the future.

Another commenter suggested that § 1.42–16(c)(3) should be deleted if it is intended to impose conditions beyond the restrictions under section 9 of the Act, because the Service is improperly infringing upon the Department of Housing and Urban Development's (HUD) authority to provide subsidies under section 9. The final regulations do not adopt this suggestion. Section 1.42–16 does not interpret HUD's authority for paying subsidies under section 9; it describes the extent to which section 9 payments may be made without a reduction in a building's eligible basis under section 42(d)(5) of the Code. The conditions imposed on section 9 payments in § 1.42–16(c)(3) serve to differentiate section 9 assistance for operating expenses that function in a manner similar to rental assistance payments under section 8 of the Act from section 9 assistance that is applied to uses more closely associated with operational expenses requiring a reduction in a building's eligible basis under section 42(d)(5).

This commenter also suggested that if § 1.42–16(c)(3) were to be retained, it should be clarified to provide that actual operating costs be determined by HUD and/or the appropriate public housing agency. The commenter reasons that HUD is already making this determination in the context of deciding the proper amount of assistance to make

under section 9 of the Act, and that precedent already exists for allowing HUD to make certain interpretations relating to the section 42 program. The final regulations do not adopt this suggestion. The IRS and Treasury believe they should retain the ability to determine what costs are appropriately characterized as operating costs that require a reduction in a building's eligible basis under section 42(d)(5) of the Code.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Christopher J. Wilson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.42–16T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.42–16 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–16 is added to read as follows:

§ 1.42–16 Eligible basis reduced by federal grants.

(a) *In general.* If, during any taxable year of the compliance period (described in section 42(i)(1)), a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with federal funds (whether or not includible in gross income), the eligible basis of the building for the taxable year and all succeeding taxable years is reduced by the portion of the grant that is so funded.

(b) *Grants do not include certain rental assistance payments.* A federal rental assistance payment made to a building owner on behalf or in respect of a tenant is not a grant made with respect to a building or its operation if the payment is made pursuant to—

(1) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)

(2) A qualifying program of rental assistance administered under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g); or

(3) A program or method of rental assistance as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(c) *Qualifying rental assistance program.* For purposes of paragraph (b)(2) of this section, payments are made pursuant to a qualifying rental assistance program administered under section 9 of the United States Housing Act of 1937 to the extent that the payments—

(1) Are made to a building owner pursuant to a contract with a public housing authority with respect to units the owner has agreed to maintain as public housing units (PH-units) in the building;

(2) Are made with respect to units occupied by public housing tenants, provided that, for this purpose, units may be considered occupied during periods of short term vacancy (not to exceed 60 days); and

(3) Do not exceed the difference between the rents received from a building's PH-unit tenants and a pro rata portion of the building's actual operating costs that are reasonably allocable to the PH-units (based on square footage, number of bedrooms, or similar objective criteria), and provided that, for this purpose, operating costs do not include any development costs of a building (including developer's fees) or the principal or interest of any debt incurred with respect to any part of the building.

(d) *Effective date.* This section is effective September 26, 1997.

§ 1.42–16T [Removed]

Par. 3. Section 1.42–16T is removed.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25490 Filed 9–25–97; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8732]

RIN 1545–AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the treatment of low-income housing units in a building that is occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). These regulations affect owners of those buildings who claim the low-income housing tax credit.

DATES: These regulations are effective September 26, 1997.

For dates of applicability of these regulations, see § 1.42–15(i).

FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1996, the IRS published a notice of proposed rulemaking in the **Federal Register** (PS–29–95 at 61 FR 27036) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42(g)(2)(D) of the Internal Revenue Code. A public hearing was scheduled for September 17, 1996, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. However, the IRS received no requests to speak at the public hearing, and no public hearing was held. Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The general rule in section 42(g)(2)(D)(i) provides that if the income

of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). Under this exception, the unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new occupant, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Rules and Definitions

One commentator suggested that the available unit rule under the proposed regulations did not clearly indicate whether the aggregate income of all occupants of a unit is taken into account. Accordingly, the final regulations clarify that an over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Commentators requested that the final regulations specify whether a comparable unit is measured by floor space or number of bedrooms. The final regulations provide that a comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available.

Some commentators stated that the provision in the proposed regulations that all available comparable units (not just the ''next available'' unit) must be rented to qualified residents to continue treating an over-income unit as a low-income unit is inconsistent with the title of section 42(g)(2)(D)(ii). Although the title of that provision uses the term next available unit, the text of the rule provides that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. This means that if a building has more than one over-income unit, renting any available comparable unit (a comparably sized or smaller unit) to a qualified resident preserves the status of all over-income units as low-income units. Similarly, if any available comparable unit is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units. In operation, this means that the owner must continue to rent any available comparable unit to a qualified resident until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over-income units as low-income units has no immediate significance. (However, the failure to maintain an over-income unit as a low-income unit may affect the owner's decision of whether or not to rent a particular available unit at market rate at a later time.) Consequently, the final regulations provide that all available comparable units in the building, not only the next available comparable unit, must be rented to qualified residents to retain the low-income status of the over-income units.

Application of Rules on a Building by Building Basis

The proposed regulations provide that in a project containing more than one low-income building, the available unit rule applies separately to each building. Some commentators suggested that the regulations should permit residents of over-income units to move to available units in different buildings within the same low-income housing project without violating the available unit rule. However, because the requirements under section 42 must be satisfied on a building by building basis, the final regulations provide that the available unit rule only permits a current resident to move to another unit within the same building of a low-income housing project.

In addition, in response to requests from several commentators, the final regulations make clear that when a current resident moves to a different unit within the same low-income building, the units exchange status. (See example 2 of § 1.42–15(g) of the proposed regulations and § 1.42–15(h) of the final regulations.) Thus, the newly occupied unit adopts the status of the vacated unit, and the vacated unit assumes the status the newly occupied unit had immediately prior to its occupancy by the qualifying residents.

Timing Issues

The methods of committing rental units to tenants varies in different jurisdictions. However, it is a common rental practice to have some form of preliminary reservation for a unit prior to the date on which a lease is signed or the unit is occupied. Thus, several commentators have requested clarification that once a unit is reserved for a prospective tenant, it is no longer treated as available for purposes of the available unit rule. Accordingly, the final regulations provide that a unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to a reservation that is binding under local law.

Finally, financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. Accordingly, the final regulations provide that the rules under the final regulations are not intended as an interpretation of the applicable rules under section 142.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.42–15 is also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–15 is added to read as follows:

§ 1.42–15 Available unit rule.

(a) *Definitions.* The following definitions apply to this section:

Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.

Available unit rule means the rule in section 42(g)(2)(D)(ii).

Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in section 142(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.

Current resident means a person who is living in the low-income building.

Low-income unit is defined by section 42(i)(3)(A).

Nonqualified resident means a new occupant or occupants whose aggregate income exceeds the applicable income limitation.

Over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Qualified resident means an occupant either whose aggregate income (combined with the income of all other occupants of the unit) does not exceed the applicable income limitation and who is otherwise a low-income resident under section 42, or who is a current resident.

(b) *General section 42(g)(2)(D)(i) rule.* Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted—

(1) The unit continues to be treated as a low-income unit; and

(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) *Exception.* A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. In other words, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building to continue treating the over-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance. The failure to maintain the over-income units as low-income units, however, may affect the decision of whether or not to rent a particular available unit at market rate at a later time. A unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

(e) *Available unit rule applies separately to each building in a project.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) *Result of noncompliance with available unit rule.* If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units.

(g) *Relationship to tax-exempt bond provisions.* Financing arrangements that purport to be exempt-facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). This section is not intended as an interpretation under section 142.

(h) *Examples.* The following examples illustrate this section:

Example 1. This example illustrates noncompliance with the available unit rule in a low-income building containing three over-income units. On January 1, 1998, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. By the close of 1998, the first year of the credit period, the project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) and were otherwise low-income residents under section 42. Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. To avoid recapture of credit, the project owner must maintain five of the units as low-income units. On November 1, 1999, the certificates of annual income state that annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1999, Units 8 and 9 became vacant. On December 1, 1999, the project owner rented Units 8 and 9 to qualified residents who were not current residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1999, the project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident who was not a current resident,

eight of the units would be low-income units. At that time, Units 1, 2, and 3, the over-income units, could be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite J's income exceeding the applicable income limitation, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit newly occupied by J becomes an over-income unit under the available unit rule. The unit vacated by J assumes the status the newly occupied unit had immediately before J occupied the unit. The over-income units in the building continue to be treated as low-income units.

(i) *Effective date.* This section applies to leases entered into or renewed on and after September 26, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25493 Filed 9–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD8–97–038]

RIN 2115–AE46

Special Local Regulations; 1997 Galveston Offshore Powerboat Festival, Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Galveston Offshore Powerboat Festival. This event will be held on October 11, 1997 from 11 a.m. to 5 p.m. in the Galveston Ship Channel and on October 12, 1997 from 10 a.m. to 6 p.m. offshore of Galveston Island at Galveston, Texas. These regulations are needed to provide for the safety of life on the navigable waters during the event.

DATES: These regulations become effective on October 11, 1997 at 10:30 a.m. until 5:30 p.m. and on October 12, 1997 at 9:30 a.m. until 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: LT Harry Schmidt, Operations Officer, U.S. Coast Guard Group Galveston. Tel: (409) 766–5603.

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 power boat race called the ''1997 Galveston Offshore Powerboat Festival''. This event is sponsored by Texas Gulf Coast Racing, Inc. It will consist of an inshore powerboat race in the Galveston Ship Channel on October 11, 1997 and an offshore race on October 12, 1997. Approximately 60 offshore V-hull and catamaran-hull outboard and inboard race boats from 22 to 50 feet in length operating at high speeds are expected to participate in the races. The courses to be followed by the races will be marked by patrol vessels positioned at various points along each route. Fifty to two hundred spectator boats are expected for this event.

While viewing the event at any point outside the regulated area is not prohibited spectators will be encouraged to congregate within areas designated by the sponsor. Non-participating vessels will be permitted to transit the area every hour on the hour at No Wake Speed with the permission of the patrol commander.

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 the 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.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

Mine 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:

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 § 100.35–T08–038 is added to read as follows:

§ 100.35–T08–038 Galveston, TX.

(a) *Regulated Area:* The Galveston Ship Channel from the Pelican Island Bridge to Pier 9 on October 11, 1997 and The Gulf of Mexico within the area bounded by a point on the shoreline at 29–18.7N, 094–45.5W southeast to 29–18.2N, 094–45.0W thence southwest to 29–16.0N, 094–46.4W thence west to 29–14.8.0N, 094–49.6W thence northwest to the shoreline at 29–15.7N, 094–52.0W on October 12, 1997.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators.

Participants are those persons and 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 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, U.S. Coast Guard Group Galveston.

(1) No spectator shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(2) When hailed and 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. He may terminate the event at any time it is deemed necessary for the protection of life or property. He may be reached on VHF–FM Channel 16, when required by the call sign *PATCOM*.

(c) *Effective Dates:* This section is effective from 10:30 a.m. until 5:30 p.m. on October 11, 1997 and from 9:30 a.m. until 6:30 p.m. on October 12, 1997.

Dated: September 19, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–25602 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–97–039]

RIN 2115–AE46

Special Local Regulations; Head of the Licking Regatta, Licking River Mile 0.0–3.5, Newport, KY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Head of the Licking Regatta. This event will be held on September 27, 1997 from 8 a.m. until 5 p.m. at Newport, Kentucky. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective from 8 a.m. until 5 p.m., on September 27, 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 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 rowing regatta to benefit a non-profit rowing organization. The event is sponsored by Kendle of Cincinnati, Ohio. Rowing races will utilize the Licking River at approximately miles 0.0 to 3.5, midchannel. 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 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.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–T08–039 is added to read as follows:

§ 100.35–T08–039 Licking River at Newport, Kentucky

(a) *Regulated Area:* Licking River Mile 0.0–3.5.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. *Paticipants* are those persons and 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 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:* This section is effective from 8 a.m. to 5 p.m. September 27, 1997.

Dated: September 19, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 97–25598 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–022]

RIN 2115–AE47

Drawbridge Operation Regulations; Manchester Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the operating rules for the Massachusetts Bay Transportation Authority (MBTA) Bridge over Manchester Harbor in Manchester, Massachusetts. The mariners located in the vicinity of the MBTA Bridge and the Manchester Harbormaster requested longer operating hours for the bridge during the summer boating season. This change to the regulations will require the bridge owner to crew the bridge for eight additional hours each day from Memorial Day through the end of September, to install clearance gauges and to post the regulations for the operation of the bridge.

DATES: This final rule is effective October 27, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Manager, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 14, 1994, the Coast Guard published a temporary 90 day deviation (59 FR 30524) from the effective operating regulations to evaluate changes to the operating rules during the 1994 boating season. The Coast Guard received one letter opposing the proposal and nine letters in favor of increasing the operating hours for the bridge during the boating season. On July 17, 1995, the Coast Guard published a temporary final rule with a request for comments (60 FR 36357) which tested an alternate operating schedule for the bridge. The Coast Guard received 20 letters from mariners. Three petitions with a total of 40 signatures, a letter from Manchester Harbor Marina, and a letter from the Manchester Harbor Boat Club with 200 members were also received. All comments requested that the operating rules be changed to require the bridge to open on signal from 7 a.m. to 11 p.m. each day, Memorial Day through the end of September. On April 11, 1997, the Coast Guard published a notice of proposed rulemaking with a request for comments (62 FR 17762) to permanently change the operating hours to 7 a.m. to 11 p.m. Memorial Day to the end of September. No additional comments were received as a result of the April 1997, proposal.

Background and Purpose

The Manchester MBTA Bridge was formerly owned and operated by the Boston and Maine Railroad. The present owner of the bridge is the MBTA. The existing operating regulations are published at 33 CFR 117.603 and require that the bridge be crewed from 1 April through 1 November from 9 a.m. to 6 p.m., with a one hour lunch closure between 1 p.m. and 2 p.m. daily.

The Coast Guard received a request in May 1994, from the Manchester Harbormaster/Chief of Police and several mariners located upstream of the bridge to extend the hours that the Manchester MBTA Bridge is crewed during the boating season. The June 1994 temporary deviation extended the hours that the bridge was crewed by an additional five hours a day during the boating season. It required the bridge to be crewed from 8 a.m. to 9 p.m. daily and eliminated the one hour lunch hour closure from 1 p.m. to 2 p.m. each day. The Coast Guard asked for comments at the close of the 90 day deviation period.

The Coast Guard received only one letter during the comment period that closed October 31, 1994. The MBTA, the bridge owner, opposed the proposal to extend the operating hours of the bridge. Their objection was based upon the additional cost of $16,000 to crew the bridge during the deviation period. The Coast Guard requested additional data and actual copies of the bridge logs to analyze the impact of the deviation. The data was never provided.

Several comments were received after the comment period closed. The comments included seven petition letters, one letter representing forty-five boat owners located upstream of the bridge at the Manchester Harbor Marina, and one letter from the Manchester Harbormaster/Chief of Police. All the letters were strongly in favor of increasing the operating hours for the bridge.

The July 1995, temporary final rule increased the period that the bridge opened on signal by three hours, from 6 p.m. to 9 p.m., each day during the boating season. As noted in the Regulatory History section above, all the letters received in response to the rule were in favor of permanently changing the operating regulations to require that the bridge be crewed from 7 a.m. to 11 p.m. each day from Memorial Day through the end of September. The mariners requested the extended bridge operating hours so that they could get underway earlier in the summer mornings and return to their moorings after a day trip or their evening racing and sailing.

One letter from the bridge owner, the MBTA, opposed the proposal requesting that the hours remain unchanged. The MBTA objected to the extra operating hours based upon a claim that there was a $27,000 additional cost to crew the bridge during the 1995 test period. Copies of the bridge logs were not submitted as requested.

On April 30, 1996, the Coast Guard implemented another temporary final rule with a request for comments (61 FR 18946) requiring the bridge to be crewed from 7 a.m. to 11 p.m. each day Memorial Day through the end of September. On May 7, 1996, the Coast guard sent a letter to the MBTA requiring them to post a sign summarizing the temporary regulations and maintain a bridge log for the 1996 test period. The MBTA was asked to provide bridge logs and operating cost data to the Coast Guard no later than October 31, 1996, for consideration of impacts upon the MBTA. The Coast Guard received one letter from a mariner in favor the temporary regulation. A review of the bridge logs provided by MBTA for the 1996 test period indicated that there was an average of 247 additional openings per month for the hours 7 a.m. to 11 p.m.

during June, July and August 1996. Thirty-five additional openings during these hours were logged for September, 1996. The MBTA submitted a letter indicating an additional operating cost of $41,459 for the period May 30 to September 30, 1996. On April 11, 1997, the Coast Guard published a notice of proposed rulemaking (62 FR 17762) to permanently change the operating hours for the Manchester MBTA Bridge to 7 a.m. to 11 p.m. Memorial Day to the end of September. No additional comments have been received in response to the notice of proposed rulemaking.

Discussion of Comments and Changes

Upon review of the comments from all the test periods, the Coast Guard believes that the operating hours for the bridge should be permanently changed. The mariners specifically requested, after several alternative schedules, that the bridge be crewed from 7 a.m. to 11 p.m. each day during the prime boating season, Memorial Day through the end of September. The bridge logs also indicated that there were significant additional openings as a result of the longer operating hours for the bridge; therefore, the Coast Guard is changing the operating hours for the Manchester MBTA Bridge. This final rule change will amend section 117.603 to require the Manchester MBTA Bridge to open on signal between 7 a.m. and 11 p.m. from Memorial Day through September 30 each year. The hours that the bridge is crewed from April 1 to Memorial Day and from October 1 through November 1 would remain 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m.

It is the Coast Guard's policy in the interest of protecting the needs of navigation to assure that drawbridges are operated in such a manner that they are a minimum obstruction to waterway traffic while at the same time still providing for the reasonable needs of land traffic. Under that policy drawbridges shall be operated in a manner and under operating rules and regulations that are in the overall public best interest by pursuing balanced operating schedules. Under the existing operating rules for the Manchester MBTA Bridge, the needs of navigation were clearly not being satisfied as evidenced by the comments from the mariners and the documented increased openings as a result of the 1996 temporary final rule. The Coast Guard responded to all the MBTA's submissions, but believes the increase in the operating hours for a four month period each year will allow the mariners to enjoy the prime boating season and best serve the public interest by balancing the needs of the boating public against the needs of rail traffic and operating costs. The expanded operating schedule will allow the mariners to depart earlier and return later each day during the prime boating season. The previous hours clearly did not meet the needs of navigation as a result of the bridge not opening until 9 a.m. and closing at 6 p.m. during the boating season.

The Coast Guard has also changed the advance notice requirements of the Manchester MBTA Bridge by establishing a four hour advance notice requirement for openings during all periods when the bridge is not scheduled to be crewed.

The Coast Guard determined that clearance gauges should be installed and maintained for the safety of navigation to assist mariners in determining whether they can safely pass under the bridge without an opening during periods when the bridge is not crewed. The final rule requires the bridge owner to post the operating regulations to assist mariners interested in transiting under the bridge by posting the operating schedule of the bridge.

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. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This rule adopts the operating hours which the Coast Guard believes to be appropriate based on the results of previous test periods and public comments. The Coast Guard believes this rule achieves the requirement of balancing the navigational rights of recreational boaters and the needs of land based transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with 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.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.603 to read as follows:

§ 117.603 Manchester Harbor.

The Massachusetts Bay Transportation Authority Bridge at mile 1.0 in Manchester, shall operate as follows:

(a) The draw shall open on signal—

(1) From Memorial Day through September 30 from 7 a.m. to 11 p.m.;

(2) From April 1 to Memorial Day and from October 1 to November 1 from 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m.

(b) At all other times, the draw shall open on signal with at least four hours notice.

(c) The owner of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained in accordance with the provisions of section 118.160 of this chapter.

§ 117.604 [Removed]

3. Section 117.604 is removed.

Dated: August 17, 1997.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 97–25601 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–97–027]

Safety Zone Regulation; Commencement Bay Maritime Festival Tugboat Races, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone during the Commencement Bay Maritime Festival Tugboat Races held on Commencement Bay in Tacoma, WA. This event will be held on Sunday, September 28, 1997, from 12:30 p.m. to 3:30 p.m. (PDT). The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. Entry into the safety zone will be prohibited during the event in order to keep spectator vessels from interfering with the races and to prevent damage that may be caused by the large wakes produced by the tugboats during the races.

DATES: This regulation becomes effective on September 28, 1997, at 12:30 p.m. and will terminate at 3:30 p.m. (PDT) that same day, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Joel Roberts, c/o Commanding Officer, Coast Guard Marine Safety Office, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective less than 30 days from the date of publication in the **Federal Register.** The final details of this event were not available from its sponsor more than 30 days prior to the event. Prompt regulatory action is needed in order to provide for the safety of spectators and participants during this event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Tug Boat Races are sponsored by the Commencement Bay Maritime Festival Committee as part of the Commencement Bay Maritime Festival and will be conducted on the waters of Commencement Bay, Tacoma, WA. This one day event attracts a large number of spectator craft which gather on the waters near the race course. To promote the safety of both the spectators and participants, a safety zone will be established and entry into this safety zone will be restricted during the event. This action is necessary in order to keep spectators off of the race course and to prevent any damage to spectator vessels that may be caused by the large wakes produced by the tugs during the races. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal, state, and local agencies.

Regulatory Evaluation

This proposal 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 CFR 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 policies and procedures of DOT is unnecessary. This expectation is based on the fact that the safety zone will involve less than one square mile of area on Commencement Bay and entry into this zone will be restricted for only 3 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has concluded that under Section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part

165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165T.13–022 is added to read as follows:

§ 165.T13–022 Safety Zone; Commencement Bay, Tacoma, WA.

(a) *Location*. The following area is a safety zone: All waters of Commencement Bay, Tacoma, WA, bounded by a line commencing at position latitude 47°15′49″ N, longitude 122°26′00″ W; thence to position latitude 47°16′24″ N, longitude 122°26′19″ W; thence to position latitude 47°17′23″ N, longitude 122°28′40″ W; thence to position latitude 47°17′00″ N, longitude 122°29′00″ W; thence along the shore of Commencement Bay to position latitude 47°15′41″ N, longitude 122°26′21″ W; thence returning across the mouth of the Thea Foss Waterway to the point of origin. This safety zone resembles a rectangle measuring approximately 2.4 miles along the shoreline and extending approximately 800 yards into Commencement Bay. [Datum: NAD 83]

(b) *Regulations*. In accordance with the general regulations in 165.23 of this part, no person or vessel may enter or remain in this zone, except for participants in the event, supporting personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates*. This section is effective on September 28, 1997, at 12:30 p.m. (PDT) and terminates on September 28, 1997, at 3:30 p.m., unless sooner terminated by the Captain of the Port.

Dated: September 18, 1997.

M.S. Boothe,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 97–25597 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–97–019]

RIN 2115–AE84

Regulated Navigation Area: Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area on portions of the Miami River, and Tamiami Canal. Over 300 freight vessels, ranging in size from 40 to 278 feet in length and 20 to 2600 gross tons routinely operate from the Miami River and the Tamiami Canal. The waterway channel is well under 150 feet wide at most points, and as vessels are often moored several abreast into the waterway this can result in little room in the channel for the safe navigation of other vessels transiting the waterway. This regulated navigation area is needed to provide for an unrestricted navigation channel by preventing the improper mooring of vessels on affected portions of the Miami River and the Tamiami Canal. By establishing this permanent regulation, the Coast Guard expects to improve navigational safety on the river, prevent marine casualties which can cause injury to persons, property and the environment, and ensure the river's continued ability to serve as a main artery for flood control.

DATES: This Regulated Navigation Area is effective October 27, 1997.

FOR FURTHER INFORMATION CONTACT: LCDR S.M. Hanewich, Port Management and Response Department, USCG Marine Safety Office Miami at (305) 535–8764.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking concerning this Regulated Navigation Area on the Miami River, was published in the **Federal Register** on June 9, 1997 (62 FR 31385). No comments were received during the comment period.

Background and Purpose

These regulations are needed to provide for the unimpeded transit of vessels along portions of the Miami River and the Tamiami Canal, to prevent damage to bridges and other structures or moored vessels, and to protect the navigable waters from harm resulting from improperly moored vessels in the Miami River and Tamiami Canal. The project channel depth is 15 feet. The width varies from 150 feet at the mouth of the river (at the Brickell Avenue Bridge) to 90 feet at the limit of navigation (South Florida Water Management District salinity dam). The Coast Guard believes that a significant risk exists that vessels rafted too far into the waterway channel interfere with the ability of other vessels to navigate. Furthermore, local emergency response personnel have been hampered in their ability to reach outboard rafted vessels during vessel fires and other emergencies.

The Miami River also serves as a flood control conduit in southern Florida, especially during hurricanes and tropical storms. During periods of high water, the South Florida Water Management District may release water from the Everglades and surrounding areas into the river. Vessels that are improperly moored along the river, as when there are more than two vessels abreast, create a risk that the vessels may break loose and damage bridges or other vessels, or create obstructions which could jeopardize navigation and flood control. This rule is intended to improve navigational safety on the river, and ensure the river's continued ability to serve as a main artery for flood control.

These regulations would not allow vessels to be rafted more than two abreast. Neither a single vessel nor a maximum of two rafted vessels will be allowed to extend greater than 54 feet into the main river (measured from the dock) without permission of the Captain of the Port. There are many mooring facilities available on the river to accommodate those vessels required to move because of these regulations. These regulations will require that a minimum navigation channel width of 65 feet exist on the Miami River at all times, from the Brickell Avenue Bridge west to the Tamiami Canal. A minimum channel width of 45 feet shall exist at all times on the Tamiami Canal and on the Miami River west of its junction with the Tamiami Canal to the South Florida Water Management District's salinity dam. No moored vessels shall extend into the channels in such a way as to obstruct navigation. All moored and rafted vessels shall provide safe access from the shore in order that the vessel can be boarded by crew and authorities quickly and efficiently as needed.

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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary as there are numerous available moorings on the Miami River and Tamiami Canal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as there are multiple mooring facilities available on the Miami River and the Tamiami Canal.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environmental Analysis

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.e(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist have been prepared and are available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.726 is added to read as follows:

§ 165.726 Regulated Navigation Areas; Miami River, Miami, Florida.

(a) *Location.* The following are Regulated Navigation Areas:

(1) All the waters of the Miami River, Miami, Florida, from the Brickell Avenue Bridge, in approximate position 25°–46.19′ N, 80°–11.4′ W, inland to the South Florida Water Management District's salinity dam in approximate position 25°–48.4′ N, 80°–15.6′ W.

(2) The Tamiami Canal from its intersection with the Miami river in approximate position 25°47.7′ N, 80°14.7′ W to the N.W. 37th Avenue bridge in approximate position 25°48.5′ N, 80°15.5′ W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.* The restrictions in this paragraph apply to vessels operating within the regulated navigation areas in paragraph (a) of this section unless authorized to deviate by the Captain of the Port, Miami, Florida, or a Coast Guard commissioned, warrant, or petty officer designated by him.

(1) All rafted vessels (inboard and outboard) must be properly moored in accordance with applicable municipal laws and regulations.

(2) At no time shall any vessels be rafted more than two abreast.

(3) Neither single nor rafted vessels shall extend greater than 54 feet into the main river (measured from the dock) without permission of the Captain of the Port.

(4) A minimum channel width of 65 feet shall be maintained at all times on the Miami River from the Brickell Avenue Bridge west to the Tamiami Canal. A minimum channel width of 45 feet shall be maintained at all times on the Miami River west of the junction of the Miami River and the Tamiami Canal to the South Florida Water Management District's salinity dam, as well as on the Tamiami Canal from its mouth to the N.W. 37th Avenue Bridge.

(5) All moored and rafted vessels shall provide safe access from the shore.

(6) All moored and rafted vessels shall provide clear and ready access for land-based firefighters to safely and quickly reach outboard rafted vessels.

(7) No vessels shall moor or raft in any manner as to impede safe passage of another vessel to any of the tributaries of the Miami River.

(8) Nothing in these regulations shall prohibit the U.S. Army Corps of Engineers from requiring the relocation or movement of vessels in a declared flood emergency.

(c) *Enforcement.* Violations of these regulated navigation areas should be reported to the Captain of the Port, Miami. Persons in violation of these regulations will be subject to civil penalty under § 165.13(b) of this part.

Dated: September 18, 1997.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97–25600 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI12–01–7266; FRL–5898–2]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 12, 1997, the Environmental Protection Agency (EPA) published an action of proposed rulemaking discussing its decision to approve a revision to the Michigan State Implementation Plan (SIP) to grant an exemption for the Muskegon County ozone nonattainment area from the applicable Oxides of Nitrogen (NO_X) transportation conformity requirements. See **Federal Register** (62 FR 32058). No comments were received by the EPA during the 30-day comment period. This rule finalizes EPA's decision to approve the exemption for Muskegon County, moderate ozone nonattainment area, from the transportation conformity requirements for NO_X. The Michigan SIP revision request is based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. Additional information is available at the address indicated below.

EFFECTIVE DATE: This final rule is effective on October 27, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Victoria Hayden at (312) 886–4023 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Victoria Hayden, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–4023.

SUPPLEMENTARY INFORMATION: The specific rationale EPA used to approve the exemption for Muskegon County from the transportation conformity requirements of NO_X was explained in the proposed rulemaking and will not be restated here. This rule announces EPA's final action regarding approval of the Michigan SIP revision.

I. EPA Final Rulemaking Action

In this final action EPA is approving the transportation conformity NO_X waiver SIP revision for the State of Michigan. In light of the modeling completed thus far and considering the importance of the Ozone Transport Assessment Group (OTAG) process and attainment plan modeling efforts, EPA notes that it may reexamine the impact of this NO_X waiver. In the near future, EPA intends to require appropriate States to submit SIP measures to achieve emissions reductions of ozone precursors needed to prevent significant transport of ozone. EPA will evaluate the States' submitted SIP measures and available refined modeling to determine whether the NO_X waiver should remain in place, or whether EPA must seek a plan revision.

The EPA also reserves the right to require NO_X emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

II. Administrative Requirements

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order (E.O.) 12866

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

C. Regulatory Flexibility

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

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

D. Unfunded Mandates Reform Act

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

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

E. Submission to Congress and the General Accounting Office

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

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Oxides of Nitrogen, Transportation conformity, Transportation—air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 12, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

Part 52, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

§ 52.1174 [Amended]

2. Section 52.1174 is amended by adding paragraph (p) to read as follows:

* * * * *

(p) Approval—On November 22, 1995 the Michigan Department of Natural Resources submitted a petition for exemption from transportation conformity requirements for the Muskegon ozone nonattainment area. This approval exempts the Muskegon ozone nonattainment area from transportation conformity requirements under section 182(b)(1) of the Clean Air Act. If a violation of the ozone standard occurs in the Muskegon County ozone nonattainment area, the exemption shall no longer apply.

[FR Doc. 97–25501 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–31–1–7310a; FRL–5893–6]

Approval and Promulgation of Air Quality Implementation Plans, New Mexico; Recodification of, and Revisions to, the Air Quality Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is approving the recodification of, and revisions to, the New Mexico State Implementation Plan (SIP). The existing Air Quality Control Regulations (AQCRs) have been renumbered and reformatted into the New Mexico Administrative Code (NMAC) as required by the New Mexico State Records Center. In addition to having renumbered and reformatted the regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The intended effects of these revisions are to delete obsolete, nonessential, redundant, and technically inadequate regulations; make certain rules and definitions more explicit and; make one particular regulation more closely reflect current New Mexico Environment Department (NMED) policy.

DATES: This action is effective on November 25, 1997, unless adverse or critical comments are received by October 27, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–2174.

SUPPLEMENTARY INFORMATION:

I. Background

On January 8, 1996, the Governor of New Mexico formally submitted a recodification of, and revision to, the State Implementation Plan. On July 18, 1996, the Governor formally submitted a revision to the recodified regulation 20 NMAC 2.72. The January submittal recodification and revisions were adopted by the New Mexico Environmental Improvement Board (NMEIB) at hearings in July, September, October and December 1995. The August submittal revision to 20 NMAC 2.72 was adopted by the NMEIB at a hearing on June 14, 1996. The recodification was prompted by the New Mexico State Records Center requirement that all AQCRs be recodified into the new numbering system and format of the NMAC. As well as renumbering and reformatting regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The intended effects of these revisions are to comply with the requirements of the New Mexico State Records Center as well as to: delete obsolete, non-essential, redundant, and technically inadequate regulations; make certain rules and definitions more explicit and; make one particular regulation more closely reflect current NMED policy.

The revisions fall into three groups as outlined below. The first group consists of renumbering and format revisions consistent with the NMAC requirements. The second group consists of standard administrative wording changes that have been made throughout all regulations in which they appear. The third group consists of other minor revisions, each of which are discussed separately below.

II. NMAC Format Revisions

The NMAC system is divided into Titles, Chapters, Parts and Sections. Title 20, *Environmental Protection*, includes all rules and regulations providing for the protection of the environment. Chapter Two of Title 20, *Air Quality*, contains the revised and recodified AQCRs of the NMED. Chapter Two is divided into Parts, which are further divided into Sections. The resulting NMAC for air quality is of the format: 20 NMAC 2.xxx.yyy, where xxx is the Part number and yyy is the Section number.

The following administrative sections have been added to each Part as required by the State Records Center:

100 ISSUING AGENCY
101 SCOPE
102 STATUTORY AUTHORITY
103 DURATION
104 EFFECTIVE DATE
105 OBJECTIVE
106 AMENDMENTS AND SUPERSESSION OF PRIOR REGULATIONS
107 DEFINITIONS

Section 108, DOCUMENTS, has been added to all Parts citing documents other than the NMAC, such as 40 *Code of Federal Regulations* (CFR). Also, RESERVED has been added to all nonexistent sections between subparts.

III. Standard Administrative Revisions

In addition, the following administrative changes have been made to all rules and regulations in which they appear:

1. ''division'' to ''Division''
2. ''director'' to ''Secretary''

3. ''department'' to ''Department''
4. ''secretary'' to ''Secretary''
5. ''federal Clean Air Act'' to ''Federal Act''
6. ''federal Act'' to ''Federal Act''
7. ''Federal environmental protection agency'' to ''US EPA''
8. ''EPA'' to ''US EPA''
9. ''this regulation'' to ''this Part''
10. ''section n'' to ''Section n''
11. ''Part'' added to definitions section of all Parts
12. ''Air Quality Control Unit of the Department'' to ''Air Pollution Control Bureau of the Department''
13. Internal references have been changed to reflect the NMAC numbering system.
14. Effective date added to all subsections.
15. Regulations have been rewritten so as to be positive: ''no person owning or operating * * * shall'', has been changed to ''the owner or operator * * * shall not.''
16. Obsolete language, outdated compliance schedules and outdated effective dates have been deleted.

IV. Other Revisions

A. Non-Methane Hydrocarbon

The non-methane hydrocarbon (NMHC) ambient air quality standard, AQCR 201(C)(7), has been deleted. The rule has been found to be technically inadequate, 48 FR 628. The intended effect of this revocation is to eliminate unnecessary regulations pertaining to ambient air quality.

A NMHC National Ambient Air Quality Standard (NAAQS) was promulgated on April 30, 1971. The standard is unique among the primary NAAQS because it was expressly developed as a guide and not as a health-based standard. When this standard was promulgated in 36 FR 8186, EPA stated that ''The sole purpose of prescribing a hydrocarbon standard is to control oxidants.'' The standard was promulgated because it represented EPA's best judgement at the time of the maximum level of NMHCs which would ensure the attainment of the NAAQS for photochemical oxidants. The EPA has since determined that there is no single, universally applicable relationship between NMHCs and photochemical oxidants and that NMHCs, as a class, apparently do not produce any health or welfare effects at or near ambient levels. On January 5, 1983, the NAAQS was revoked in 48 FR 628.

Considering that NMHCs do generate photochemical oxidants, they have continued to be regulated. Precursors to photochemical oxidants today are commonly called Volatile Organic Compounds (VOC). This is a much broader term than NMHCs. The VOCs are regulated under the Federal ozone regulations. Major sources must limit or control VOC output, especially in ozone nonattainment areas. Also, automobiles located in nonattainment areas undergo inspection and maintenance programs. Such programs are part of the SIP to control ozone pollution. So, despite the deletion of the Federal and state NMHC standards, many programs exist to regulate the emissions of this type of compound to meet the NAAQS for ozone.

B. Beryllium, Asbestos and Heavy Metals

The ambient air quality standards for beryllium, asbestos and heavy metals, 20 NMAC 2.3.109(B), formerly AQCR 201(B), have been deleted. These pollutants have been superseded by other state and Federal regulations. The intended effect of these revocations is to eliminate unnecessary and redundant regulations pertaining to ambient air quality.

1. Federal National Emission Standards for beryllium are included in 40 CFR part 61, subparts C and D. Through 20 NMAC 2.78, *Emission Standards for Hazardous Air Pollutants*, New Mexico has the authority to implement and enforce Federal standards for beryllium. Subpart C is general, and subpart D is specific for beryllium rocket motor firing. Sources subject to subpart C are: extraction plants, ceramic plants, foundries, incinerators, and propellant plants and machine shops which process beryllium.

Beryllium emission is also regulated by 20 NMAC 2.74, *Prevention of Significant Deterioration*. Major sources which have emission rates which are greater than a certain threshold or any emission rate which would result in an air concentration greater than a certain threshold shall apply Best Available Control Technology (BACT), provide for air quality monitoring of beryllium, and perform ambient air quality impact analyses.

2. Asbestos emissions are regulated under 40 CFR part 61 subpart M, *National Emission Standards for Asbestos*, in which strict requirements are laid out for the emissions, processing and handling of asbestos for many sources. Through 20 NMAC 2.78, *Emission Standards for Hazardous Air Pollutants*, New Mexico has the authority to implement and enforce Federal standards for asbestos.

Asbestos emissions are also controlled under the state regulation 20 NMAC 2.74, *Prevention of Significant Deterioration*. Major sources which have emission rates which are greater than a certain threshold shall apply BACT, provide for air quality monitoring of asbestos, and perform ambient air quality impact analyses.

3. Heavy Metals. Heavy metal emissions are regulated under permitting rules. The air toxics portion of 20 NMAC 2.72, *Permits*, includes emission rate thresholds and Occupational Exposure Limit (OEL) thresholds on a number of heavy metals. These metals are barium, cadmium, chromium, cobalt, copper, hafnium, indium, manganese, molybdenum, nickel, platinum, rhodium, silver, tantalum, tellurium, thallium, tin, tungsten, uranium, vanadium, yttrium, and zirconium. If emission rates are greater than the emission rate threshold, or modeling shows that the eight-hour average ambient concentration of the toxic air pollutant exceeds one-one hundredth of the OEL, the permit application shall include a health assessment for the toxic air pollutant under consideration.

Lead and mercury are also controlled under the state regulation 20 NMAC 2.74, *Prevention of Significant Deterioration*, which establishes emission rate and air quality concentration thresholds. If these thresholds are exceeded, the major source shall apply BACT, provide for air quality monitoring, and perform ambient air quality impact analyses.

C. Photochemical Oxidants

The ambient air quality standard for photochemical oxidants, 20 NMAC 2.3.111.C, formerly AQCR 201.B, has been deleted. This deletion takes into account the revision of the national standard.

The EPA promulgated ambient air quality standards for photochemical oxidants in 1971 (36 FR 8186). In accordance with the provisions of sections 108 and 109 of the Clean Air Act (the Act) as amended, EPA reviewed and revised the standard on February 8, 1978 (44 FR 8202). The revisions include: (1) raising the primary and secondary standard from 0.08 to 0.12 parts per million and (2) changing the chemical designation of the standard from photochemical oxidants to ozone.

Oxidants are strongly oxidizing compounds, which are the primary constituents of photochemical smog. The oxidant found in largest amounts is ozone, a very reactive form of oxygen. Oxidants also include the group of compounds referred to collectively as peroxyacylnitrates and other compounds, all produced in much smaller quantities than ozone.

Most of these materials are not emitted directly into the atmosphere but result primarily from a series of chemical reactions between oxidant precursors (nitrogen oxides and organic compounds) in the presence of sunlight. The principal sources of organic compounds are the hydrocarbon emissions from automobile and truck exhausts, gasoline vapors, paint solvent evaporation, open burning, dry cleaning fluids, chemical plants and other industrial operations. Nitrogen oxides are emitted primarily from combustion sources such as electric power generation units, gas and oil-fired space heaters, and automobile, diesel and jet engines.

The reduction in emissions of nitrogen oxides and organic compounds are achieved through Federal and State programs that have been formalized in regulations promulgated under the Act.

The deletion does not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

D. Soiling Index

Soiling Index of Ambient Air Quality Standards, 20 NMAC 2.3.112, has been deleted. This revision takes into account the availability of improved methods. The State is revising the plan consistent with the applicable requirements.

E. Smoke and Visible Emissions

Smoke and Visible Emissions, 20 NMAC 2.61, establishes controls on smoke and visible emissions for certain sources. The Part is revised by the addition of Section 111(D) which provides an exclusion ''for sources subject to the provisions of 20 NMAC 2.70, emissions which result from insignificant activities as defined 20 NMAC 2.70.'' The proposed change intends to allow sources covered by Part 70 to use the definition of insignificant activities in Part 70 to determine compliance. This addition will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirements of the Act.

F. Schedules of Compliance

Schedules of Compliance, AQCR 705, has been repealed. Regulation 705 was incorporated into the SIP, and codified at 40 CFR 52.1620(c)(9). The regulation created provisions for sources to come into compliance with subsequent State or Federal air control laws under extended schedules. Since most current statutes have their own compliance schedules, this would only be used in cases where a source required a variance to come into compliance. Repeal of this provision would oblige sources seeking a schedule of compliance to adhere to 40 CFR 51.262. This revision does not weaken the New Mexico SIP in any discernable way.

G. Air Quality Maintenance Areas

Air Quality Maintenance Areas, AQCR 706, has been repealed. Regulation 706 is the state implementation of 40 CFR 51.40 subpart D, which was repealed in the regulatory reform action taken by the EPA. The regulation 40 CFR 51.40 was determined to have become legally obsolete upon passage of the 1990 Act Amendments. Similarly, Regulation 706, implementing a Federal requirement, is obsolete.

H. Confidential Information Protection

Confidential Information Protection, 20 NMAC 1.115, (formerly AQCR 110) has been rewritten to more closely reflect NMED policy and the New Mexico Air Quality Control Act. The revision is consistent with the requirements applicable to implementation plans under 40 CFR 51.116, *Data Availability.*

Section 115 lays out procedures for handling requests for confidentiality and the conditions which must be satisfied to keep information concerning air contaminant sources confidential.

Concerning availability of data, Section 115 paragraph (B) states that Section 115 shall not be construed to prohibit disclosure of records and information: to representatives of the NMED, to representatives of the EPA, in any proceeding under the Air Quality Control Act or the Act, of data concerning nature and amount of emissions from any source, or limit the use of such records or information in any civil or criminal action.

Furthermore, 20 NMAC 72, *Permits,* Section 210 states that the NMED shall make available for public inspection the permit application and the NMED's preliminary determination.

I. Procedures for Requesting a Variance Hearing

Procedures for Requesting a Variance Hearing, AQCR 701, paragraph (C), has been rewritten and paragraphs (D) through (I) have been deleted. This revision is consistent with the requirements applicable to implementation plans under 40 CFR part 51. Paragraph (C) now states that any further action and proceeding shall be in accordance with general adjudicatory procedures of the Environmental Improvement Board. All other language that has been deleted concerns actions and hearings of the EIB. Since the Board hears and grants variances and it has standard adjudicatory procedures for hearings, paragraphs (D) through (I) of AQCR 701 are nonessential and redundant.

J. Construction Permits

The 20 NMAC 2.72.103 has been revised to provide a stay of enforcement on the asphalt fumes portion of the air toxics list until September 1, 1997. The air toxics list is part of Subpart IV, *Permits for Toxic Air Pollutant Emissions,* which is not a part the New Mexico SIP. The actual revision wording, however, occurs in Section 103, *Duration,* which is part of the SIP.

V. Final Action

By this action, the EPA is approving the recodification and revisions of the New Mexico SIP. The existing AQCRs have been renumbered and reformatted into the NMAC as required by the New Mexico State Records Center. As well as renumbering and reformatting regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The following table lists the submitted SIP AQCRs and the corresponding NMAC part number.

The EPA has reviewed these recodification and revisions to the New Mexico SIP and is approving them as submitted.

AQCR No.	NMAC part No.	NMAC title
100	2	Definitions.
110*	1	General Provisions.
200	3	Ambient Air Quality Standards.
201*	3	Ambient Air Quality Standards.
301	60	Open Burning.
401*	61	Smoke and Visibility Emissions.
402	10	Contingency-Use Woodwaste Burners.
501	11	Asphalt Processing Equipment.
502	12	Cement Kilns.
503	13	Gypsum Processing Plants.
504	14	Particulate Emissions From Coal Burning.
505	15	Pumice Mica and Perlite Process Equipment.
506	16	Nonferrous Smelters—Particulate Matter.
506.1	17	Existing Nonferrous Smelters—Particulate Matter—Additional Requirements.
507	18	Oil Burning Equipment—Particulate Matter.

AQCR No.	NMAC part No.	NMAC title
508	19	Potash, Salt or Sodium Sulfate Processing Equipment—Particulate Matter.
509	20	Lime Manufacturing Plants—Particulate Matter.
510	21	Fugitive Particulate Matter Emissions From Nonferrous Smelters.
511	22	Fugitive Particulate Matter Emissions From the Roads Within the Town of Hurley.
601	30	Kraft Mills.
602	31	Coal Burning Equipment—Sulfur Dioxide.
603	32	Coal Burning Equipment—Nitrogen Dioxide.
604	33	Gas Burning Equipment—Nitrogen Dioxide.
606	34	Oil Burning Equipment—Nitrogen Dioxide.
651	40	Sulfuric Acid Production Units—Sulfur Dioxide, Acid Mist and Visible Emissions.
652	41	Nonferrous Smelters—Sulfur.
700	75	Permit Fees.
701*	1	General Provisions.
702*	72	Permits.
Part I	.....	Subpart I—General Provisions.
Part II	.....	Subpart II—Permit Processing and Requirements.
Part IV ...	.....	Subpart III—Source Class Permit Steamlining.
703.1	73	Notice Of Intent and Emissions Inventory Requirements.
704	5	Source Surveillance.
705*	5	(Repealed).
706*	5	(Repealed).
709	79	Permits—Nonattainment Areas.
710	80	Stack Heights.
801	7	Excess Emissions During Malfunction, Start-up, or Scheduled Maintenance.
901	8	To Control Emissions Leaving New Mexico.
1001	1	General Provisions.
1101	1	General Provisions.
1201	1	General Provisions.
1301	1	General Provisions.

*Indicates the revised AQCRs.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on November 25, 1997 unless, by October 27, 1997 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based the proposed rule for this action published elsewhere in this **Federal Register**. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 25, 1997.

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

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 8, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(66) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(66) Recodified and revised regulations of the New Mexico Administrative Code submitted by the Governor on January 8, and July 18, 1996.

(i) Incorporation by reference.

(A) New Mexico Administrative Code, Title 20, Chapter 2, Parts 1 and 2, adopted by the New Mexico Environmental Improvement Board September 22, 1995, and filed with the State Records and Archives Center on September 27, 1995.

(B) New Mexico Administrative Code, Title 20, Chapter 2, Parts 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 40, 41, 60, 61, 70, 71, 72 (Subparts I, II and, III; Subpart V, Sections 501 and 502), 73, 75, 79, and 80; adopted by the New Mexico Environmental Improvement Board on October 20, 1995, and filed with the State Records and Archives Center on October 30, 1995.

(C) Revised New Mexico Administrative Code, Title 20, Chapter 2, Part 3, Sections 109 and 111 and; Part 61, Section 111 and; repeal of Part 3, Section 112, adopted by the New Mexico Environmental Improvement Board December 8, 1995, and filed with the State Records and Archives Center on December 11, 1995.

(D) New Mexico State Records Center transmittals repealing Air Quality Control Regulations 705 and 706; adopted by the New Mexico Environmental Improvement Board December 8, 1995; and filed with the State Records and Archives Center on December 11, 1995.

(E) Revised New Mexico Administrative Code, Title 20, Chapter 2, Part 72, Section 103; adopted by the New Mexico Environmental Improvement Board on June, 18, 1996, and filed with the State Records and Archives Center on June 19, 1996.

(ii) Additional material. None.

[FR Doc. 97–25502 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECITON AGENCY

40 CFR Part 300

[FRL–5897–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Northwest Transformer South Harkness Street site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Northwest Transformer South Harkness Street Site, located in Everson, Whatcom County, Washington from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Timothy H. Brincefield, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop ECL–111, Seattle, Washington 98101, (206) 553–2100.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Northwest Transformer (South Harkness Street), Everson, Washington.

A notice of intent to delete for this site was published on August 15, 1997 (62 FR 43684). The closing date for comments was September 14, 1997. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 17, 1997.

Randall F. Smith,

Acting Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing site for ''Northwest Transformer (South Harkness St), Everson, Washington.''

[FR Doc. 97–25339 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–120; FCC 97–276]

Grandfathered Short-Spaced FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order* (*R&O*) in MM Docket No. 96–120 modifies a current rule to permit certain short-spaced stations to make changes based on a showing that no interference is caused or received, or if interference already exists, based on the total of such interference not being increased. The *R&O* also permits certain stations short-spaced to a second-adjacent-channel or a third-adjacent-channel station to change transmitter location or other station facilities without regard to such short-spacing, and to eliminate the need to obtain agreements by grandfathered stations proposing increased facilities. The types of modifications for this revised rule are expected to have no potential to increase interference to other stations.

EFFECTIVE DATE: November 25, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James Bradshaw, Mass Media Bureau, Audio Services Division, (202) 418–2720, or via the Internet at jbradsha@fcc.gov. For additional information concerning the information collections contained in the *R&O*, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is the synopsis of the Commission's *Report and Order* in MM Docket No. 96–120, adopted August 4, 1997, and released August 8, 1997.

The complete text of this *R&O*, which was adopted in MM Docket No. 96–120, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. In the *R&O*, the Commission streamlines the Commission's rules specifically dealing with modifications of commercial FM stations that became short-spaced in 1964, and have remained short-spaced since that time. The *R&O* modifies portions of part 73 of the rules to lift restrictions which unnecessarily impede flexibility as to site selection for grandfathered stations and substitute the currently required interference showings in applications, which have proven ineffective, with showings that directly relate to the impact such modification proposals have on other stations and the public.

2. In the *R&O*, the Commission changes three aspects of the rule section dealing with grandfathered short-spaced stations. First, the Commission approves use of predicted interference area analysis based on field strength protection ratios, instead of the current limitation based on the relative locations of the 1 mV/m (60 dBu) service contour of the short-spaced stations. Second, the Commission eliminates the second-adjacent-channel and third-adjacent-channel protection criteria for grandfathered short-spaced stations. Finally, the Commission eliminates the provision for agreements between grandfathered short-spaced stations.

3. The rules set forth in the *R&O* puts the focus on more accurately evaluating and controlling interference. The rules also return some flexibility when stations with second-adjacent-channel or third-adjacent-channel grandfathered short-spacings propose modifications. And for stations with co-channel or first-adjacent-channel grandfathered short-spacings, the rules allow for a more accurate determination of predicted interference. In addition, the rules eliminate the Commission's policy regarding agreements between grandfathered stations.

Final Paperwork Reduction Act of 1995 Analysis

4. This *R&O* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (''*PRA*''). It has been submitted to the Office of Management and Budget (''OMB'') for review under the *PRA*.

OMB Control Number: 3060–0727.

Title: R&O: Grandfathered Short-Spaced FM Stations.

Form Number: 301/340.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 15 FM broadcast licensees.

Estimated time per response: 5 hours per showing (0.5 hours consultation time/4.5 hours contracting time); 0.083 hours per disclosure.

Annual Burden: 9 hours.

Needs and Uses: This *R&O* eliminates unnecessary regulations and streamlines the current method of modifying pre-1964 grandfathered short-spaced FM stations. This *R&O* lifts restrictions which unnecessarily impede flexibility as to site selection for grandfathered stations and substitutes the currently required interference showings in applications with showings that directly relate to the impact such modification proposals have on other stations and the public. The data are used by Commission staff to determine if the public interest will be served and that existing levels of interference will not be increased to other stations. The Commission adopted two of the proposals as set forth in the *NPRM*. The third proposal was adopted as proposed but a disclosure requirement was added that requires that a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused must be served upon the licensee(s) of the affected short-spaced station(s).

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act [1] (RFA), the Commission considered regulatory flexibility issues in the *NPRM* in this proceeding, *Grandfathered Short-Spaced FM Stations.* [2] The Commission sought written public comments on the proposals in the *NPRM*. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *R&O* conforms to the RFA as amended. [3]

A. Need For and Objectives of the Rules

6. The Commission's Rules currently require pre-1964 grandfathered short-spaced stations proposing transmitter site changes or facility modifications to demonstrate that the proposed 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any station to which it is short-spaced. This rule was found to be overly restrictive, and open to multiple interpretations. The Commission therefore proposed revisions to its broadcast regulations to replace the current rule with a simple rule based on straight-forward interference prediction methods, and to eliminate spacing requirements for second and third-adjacent channel grandfathered stations.

7. By making these changes, grandfathered stations will have the maximum flexibility when changing transmitter site or proposing facility modifications. Any such changes must be made by filing a minor change application. The new regulations should expedite new and improved service to

[1] See 5 U.S.C. 603.

[2] *Notice of Proposed Rulemaking* in MM Docket No. 96–120, 61 FR 33474 (June 14 , 1996).

[3] See 5 U.S.C. 604. The Regulatory Flexibility Act, see 5 U.S.C. 601 *et. seq.* has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the ''Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA). We note that the *NPRM* was issued prior to enactment of the amendments to the RFA in the SBREFA.

the public, with minimal impact on existing stations. The specified changes require prior authorization from the Commission. The exact circumstances in which the Commission will allow modifications are listed in 47 CFR 73.213(a) (*see* Rule Changes at the end of this document).

B. Summary of Significant Issues Raised by Public Comments in Response to the Regulatory Flexibility Analysis

8. No comments were received specifically in response to the regulatory flexibility issues contained in the *NPRM*. However, commenters generally addressed the effects of the proposed rule changes on FM licensees, including small businesses. Generally, commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in the Rule Changes at the end of this document.

C. Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

9. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' and the same meaning as the term ''small business concern'' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] According to the SBA's regulations, entities engaged in radio broadcasting (Standard Industrial Classification (''SIC'') Code 4832 for radio) may have a maximum of $10.5 million in annual receipts 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.

10. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''[6] While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of radio broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the Regulatory Flexibility Analysis. Accordingly, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio broadcast stations and to consider further the issue of the number of small entities that are radio broadcasters in the future. Further, in this FRFA, we will identify the different classes of small radio stations that may be impacted by the rules adopted in this *R&O*.

Commercial Radio Services

11. The rules and policies adopted in this *R&O* will apply to radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[7] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[8] Included in this industry are commercial, religious, educational, and other radio stations.[9] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[10] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[11] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[12] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[13] As of March, 1997, official Commission records indicate that 12,128 radio stations were operating.[14]

12. It is estimated that the rules will affect about 450 radio stations, approximately 432 of which are small businesses.[15] These estimates are based on cursory studies performed by the staff and may overstate the number of small entities since the revenue figures on which they are based do not include aggregate revenues from non-radio affiliated companies.

Alternative Classification of Small Stations

13. An alternative way to classify small radio stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

[5] Small Business Act, 15 U.S.C. 632 (1996).

[6] We tentatively conclude that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *R&O* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *R&O* in MM Docket 93–48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601 (3). In our *Notice of Inquiry* in GN Docket No. 96–113B, *In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280 (1996), 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking in MM Docket 96–16, In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1997), we invited comment as to whether relief should be afforded to stations: (1) Based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[7] 13 CFR 121.201, SIC 4832.

[8] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[13] FCC News Release No. 31327, January 13, 1993.

[14] FCC News Release No. 64958, September 6, 1996.

[15] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

Employment Opportunity Rule (EEO) for broadcasting.[16] Thus, radio stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[17] We estimate that the total number of grandfathered broadcast stations with 4 or fewer employees is approximately 120.[18]

D. Projected Compliance Requirements of the Rule

14. Applicants filing a modification application will be required to provide similar exhibits to those currently required for a construction permit. This information may consist of an interference analysis showing that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference using the desired to undesired signal strength ratio interference calculation method.

15. Alternatively, for co-channel and first-adjacent channel applicants, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For these purposes, adequate service is defined as 5 or more aural services (AM or FM). Finally, any applicant proposing interference caused in an area where interference is not caused must serve its application upon the licensee(s) of the affected short-spaced station(s). The above-listed requirements are similar to the interference exhibits required by the previous rule section.

16. Second-adjacent and third-adjacent channel grandfathered stations will no longer be required to submit interference exhibits, therefore reducing the filing burden.

17. The information required with a modification application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations. In most instances, the new procedures will reduce the time and expense required to implement certain modifications to grandfathered broadcast stations. Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified applications will be reduced as a result of fewer necessary waiver requests, translating into time and money savings for the broadcast applicant.

E. Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent with the Stated Objectives

18. The burdens on co-channel and first-adjacent-channel grandfathered applicants will be similar to the requirements under the previous rule section. The burden on second-adjacent and third-adjacent grandfathered applicants will be reduced. Modification applications will typically require that lesser amounts of information be submitted to the Commission as compared to an application submitted under the previous rules. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make transmitter site changes that were previously inhibited by the rules. All entities will still be able to file informal objections against a modification application, just as they may do now. In addition, any applicant proposing to cause interference in an area previously receiving interference must serve its application on the licensee(s) of the affected station(s).

F. Report to Congress

19. The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this *R&O* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. 801(a)(1)(A). A copy of this RFA is also published earlier in this document.

Ordering Clauses

20. Accordingly, *it is ordered* that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 CFR part 73 is *amended* as set forth below.

21. *It is further ordered* that the requirements and regulations established in this *Report and Order* will become effective November 25, 1997.

22. For further information contact Jim Bradshaw of the Audio Services Division, Mass Media Bureau at (202) 418–2740, or by e-mail at jbradsha@fcc.gov.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.213(a) is revised to read as follows:

§ 73.213 Grandfathered short-spaced stations.

(a) Stations at locations authorized prior to November 16, 1964 that did not meet the separation distances required by § 73.207 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations,

[16] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, section 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, section 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. See *R&O* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[17] See, *e.g.*, 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First *Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395)*, 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as on with ten or fewer employees.

[18] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

provided that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference as predicted in accordance with paragraph (a)(1) of this section, or that a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

(1) The F(50,50) curves in Figure 1 of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the desired (service) field strength. The F(50,10) curves in Figure 1a of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the undesired (interfering) field strength. Predicted interference is defined to exist only for locations where the desired (service) field strength exceeds 0.5 mV/m (54 dBu) for a Class B station, 0.7 mV/m (57 dBu) for a Class B1 station, and 1 mV/m (60 dBu) for any other class of station.

(i) Co-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 20 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 40 dBu or more for predicted interference to exist).

(ii) First-adjacent channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 6 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 54 dBu or more for predicted interference to exist).

(2) For co-channel and first-adjacent channel stations, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For the purpose of this section, adequate service is defined as 5 or more aural services (AM or FM).

(3) For co-channel and first-adjacent-channel stations, a copy of any application proposing interference caused in any areas where interference is not currently caused must be served upon the licensee(s) of the affected short-spaced station(s).

(4) For stations covered by this paragraph (a), there are no distance separation or interference protection requirements with respect to second-adjacent and third-adjacent channel short-spacings that have existed continuously since November 16, 1964.

* * * * *

§ 73.4235 [Removed]

3. Section 73.4235 is removed.

[FR Doc. 97–25272 Filed 9–25–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 571]

Revision of Authority Citations

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board amends its regulations by updating its authority citations.

EFFECTIVE DATE: These rules are effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is revising certain authority citations in the Code of Federal Regulations (CFR) to reflect statutory changes made by the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA) and previous statutes.[1] The ICCTA abolished the Interstate Commerce Commission (ICC), established the Board to assume many of the functions of the ICC, and made substantial revisions to 49 U.S.C. Subtitle IV. The revisions to subtitle IV included both substantive changes and a wholesale renumbering of individual sections within subtitle IV. See H.R. Rep. No. 104–422, 104th Cong., 1st Sess. 241–47 (1995) (table showing disposition of individual statutory provisions). Under section 204(a) of the ICCTA, the regulations that had been promulgated and administered by the ICC, located at 49 CFR chapter X, were transferred to the Board (except for parts relating to functions transferred to the Secretary of Transportation under the ICCTA, which were transferred to the Secretary of Transportation and have since been moved to other chapters).[2] In an ongoing effort to update the regulations in chapter X, the Board has removed many parts that had been rendered obsolete by changes in the governing statute; revised other parts to conform to substantive changes in the governing statute; and made wholesale changes to the nomenclature of yet other parts to reflect the elimination of the ICC and the substitution of the Board. The Board is now updating the authority citations, as required by 1 CFR 21.41, for most parts within chapter X—those which are not obsolete and have not been addressed in other proceedings—to reflect renumbering of the underlying provisions in the governing statute.

Under 1 CFR 21.40, the authority citation must include the general or specific authority delegated by statute. We are deleting references to the Administrative Procedure Act (APA), because the APA does not provide an independent basis of authority.[3]

Some authority citations include only a general or a specific authority, but not both. See 49 CFR 1037 and 49 CFR 1302. We believe these to be legally sufficient; as noted, under 1 CFR 21.40, a general or specific authority is required. Because we are merely updating the authority citations to remove obsolete statutory references, we will generally not add authorities.[4]

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[1] An authority citation denotes what statutory provision(s) authorize the agency to adopt or change the regulation(s) involved.

[2] See 61 FR 54706 (October 21, 1996).

[3] *Cf. Cousins* v. *Secretary of Transp.*, 880 F.2d 603, 605 (1st Cir. 1989). We do not believe, however, that it is necessary at this time to delete APA references in authority citations that are otherwise up-to-date.

[4] In some cases, however, we have added statutory authorities. In part 1246 (Number of railroad employees), we are including a citation to 49 U.S.C. 11145 that pertains to rail carrier reports. In part 1253 (rate-making organization; records and reports), we are also adding a reference to 49 U.S.C. 11144, rail carrier records. We are also changing the headings in parts 1037 and 1331, and have modified part 1220 to remove obsolete references.

We are not updating the authorities of certain regulations (parts 1022, 1030, 1091, 1131, 1143, 1156, and 1170), because these rules appear to be obsolete will be addressed in a separate proceeding. Also, we are not amending the authority citation for part 1004. The Federal Highway Administration has incorporated all of part 1004, except section 1004.26, into 49 CFR part 356 (62 FR 32040, June 12, 1997), without removing provisions from chapter X. We question whether the portions of part 1004 that are not obsolete are still necessary, and we will seek comment in a separate proceeding as to whether this rule should be maintained. Finally, part 1144 appears to be partially obsolete. We will update the authorities for the operative portions of that rule, and later undertake a substantive revision of that part.

Small Entities

The Board certifies that these changes will not have a significant economic effect on a substantial number of small entities.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1003

Administrative practice and procedure.

49 CFR Part 1005

Claims, Investigations, Motor carriers, Railroad.

49 CFR Part 1007

Administrative practice and procedure, Privacy.

49 CFR Part 1012

Sunshine Act.

49 CFR Part 1013

Common carriers, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

49 CFR Part 1016

Claims, Equal access to justice, Lawyers.

49 CFR Part 1018

Claims, Debts.

49 CFR Part 1019

Government employees.

49 CFR Part 1021

Claims.

49 CFR Part 1033

Railroads.

49 CFR Part 1034.

Railroads.

49 CFR Part 1035

Bills of Lading, Railroads, Water carriers.

49 CFR Part 1037

Claims, Grains, Railroads.

49 CFR Part 1090

Intermodal transportation, Motor carriers, Railroads.

49 CFR Part 1100

Administrative practice and procedure.

49 CFR Part 1101

Administrative practice and procedure.

49 CFR Part 1102

Administrative practice and procedure.

49 CFR Part 1103

Administrative practice and procedure, Lawyers.

49 CFR Part 1109

Administrative practice and procedure.

49 CFR Part 1110

Administrative practice and procedure.

49 CFR Part 1116

Administrative practice and procedure.

49 CFR Part 1117

Administrative practice and procedure.

49 CFR Part 1119

Administrative practice and procedure.

49 CFR Part 1120

Freight, Motor carriers.

49 CFR Part 1133

Claims, Freight.

49 CFR Part 1137

Administrative practice and procedure, Railroads.

49 CFR Part 1139

Administrative practice and procedure, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1141

Administrative practice and procedure.

49 CFR Part 1144

Railroads.

49 CFR Part 1151

Administrative practice and procedure, Railroads.

49 CFR Part 1177

Administrative practice and procedure, Archives and records, Railroads.

49 CFR Part 1184

Administrative practice and procedure, Motor carriers.

49 CFR Part 1200

Common carriers, Uniform System of Accounts.

49 CFR Part 1220

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1242

Railroads, Taxes.

49 CFR Part 1243

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1245

Railroad employees, Reporting and recordkeeping requirements, Wages.

49 CFR Part 1246

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1248

Freight, Railroads, Reporting and recordkeeping requirements, Statistics.

49 CFR Part 1253

Motor carriers, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1302

Exports, Freight, Imports, Railroads.

49 CFR Part 1331

Motor carriers, Moving of household goods, Railroads.

Decided: September 17, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1003—FORMS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

2. The authority citation for part 1003 is revised to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706, 15906.

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

3. The authority citation for part 1007 is revised to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 721.

PART 1012—MEETINGS OF THE BOARD.

4. The authority citation for part 1012 is revised to read as follows:

Authority: 5 U.S.C. 552b(g), 49 U.S.C. 701, 721.

PART 1013—GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

5. The authority citation for part 1013 is revised to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

PART 1016—SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO BOARD ADJUDICATORY PROCEEDINGS

6. The authority citation for part 1016 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1), 49 U.S.C. 721.

PART 1018—DEBT COLLECTION

7. The authority citation for part 1018 is revised to read as follows:

Authority: 31 U.S.C. 3701, 31 U.S.C. 3711 *et seq.*, 49 U.S.C. 721, 4 CFR parts 101–105.

PART 1019—REGULATIONS GOVERNING CONDUCT OF SURFACE TRANSPORTATION BOARD EMPLOYEES

8. The authority citation for part 1019 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1021—ADMINISTRATIVE COLLECTION OF ENFORCEMENT CLAIMS

9. The authority citation for part 1021 is revised to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3717, 3718.

PART 1033—CAR SERVICE

10. The authority citation for part 1033 is revised to read as follows:

Authority: 49 U.S.C. 721, 11121, 11122.

PART 1034—ROUTING OF TRAFFIC

11. Remove the authority at the end of section 1034.1 and add the following authority citation for part 1034 after the Editorial Note:

Authority: 49 U.S.C. 721, 11123.

PART 1035—BILLS OF LADING

12. The authority citation for part 1035 is revised to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706.

PART 1037—BULK GRAIN AND GRAIN PRODUCTS—LOSS AND DAMAGE CLAIMS

13. The authority citation for part 1037 is revised to read as follows:

Authority: 49 U.S.C. 721.

14. The heading for part 1037 is revised to read as set forth above.

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

15. The authority citation for part 1090 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1100—GENERAL PROVISIONS

16. The authority citation for part 1100 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1101—DEFINITIONS AND CONSTRUCTION

17. The authority citation for part 1101 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1102—COMMUNICATIONS

18. The authority citation for part 1102 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1103—PRACTITIONERS

19. The authority citation for part 1103 is revised to read as follows:

Authority: 21 U.S.C. 862; 49 U.S.C. 703(e), 721.

PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

20. The authority citation for part 1109 is revised to read as follows:

Authority: 5 U.S.C. 571 *et seq.*

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

21. The authority citation for part 1100 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1116—ORAL ARGUMENT BEFORE THE BOARD

22. The authority citation for part 1116 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1117—PETITIONS (FOR RELIEF) NOT OTHERWISE COVERED

23. The authority citation for part 1117 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1119—COMPLIANCE WITH BOARD DECISIONS

24. The authority citation for part 1119 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1120—USE OF 1977–1978 STUDY OF MOTOR CARRIER PLATFORM HANDLING FACTORS

25. The authority citation for part 1120 is revised to read as follows:

Authority: 49 U.S.C. 721, 13701, 13703.

PART 1133—RECOVERY OF DAMAGES

26. The authority citation for part 1133 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

27. The authority citation for part 1137 is revised to read as follows:

Authority: 49 U.S.C. 721, 10705.

PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

28. The authority citation for part 1139 is revised to read as follows:

Authority: 49 U.S.C. 721, 13703.

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

29. The authority citation for part 1141 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1144—INTRAMODAL RAIL COMPETITION

30. The authority citation for part 1144 is revised to read as follows:

Authority: 49 U.S.C. 721, 10703, 10705, and 11102.

PART 1151—FEEDER LINE DEVELOPMENT PROGRAM

31. The authority citation for part 1151 is revised to read as follows:

Authority: 49 U.S.C. 10907.

PART 1177—RECORDATION OF DOCUMENTS

32. The authority citation for part 1177 is revised to read as follows:

Authority: 49 U.S.C. 721, 11301.

PART 1184—MOTOR CARRIER POOLING OPERATIONS

33. The authority citation for part 1184 is revised to read as follows:

Authority: 49 U.S.C. 721, 14302.

PART 1200—GENERAL ACCOUNTING REGULATIONS UNDER THE INTERSTATE COMMERCE ACT

34. The authority citation for part 1200 is revised to read as follows:

Authority: 49 U.S.C. 721, 11142, 11143, 11144, 11145.

PART 1220—PRESERVATION OF RECORDS

35. The authority citation for part 1220 is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

36. In section 1220.0, remove ''Motor carriers and brokers,'' ''Water carriers,'' and ''Household goods freight forwarders.''

PART 1242—SEPARATION OF COMMON OPERATING EXPENSES BETWEEN FREIGHT SERVICE AND PASSENGER SERVICE FOR RAILROADS

37. The citation for part 1242 is revised to read as follows:

Authority: 49 U.S.C. 721, 11142.

PART 1243—QUARTERLY OPERATING REPORTS—RAILROADS

38. The authority citation for part 1243 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

39. The authority citation for part 1244 is revised to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

PART 1245—CLASSIFICATION OF RAILROAD EMPLOYEES; REPORTS OF SERVICE AND COMPENSATION

40. The authority citation for part 1245 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1246—NUMBER OF RAILROAD EMPLOYEES

41. The authority citation for part 1246 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1248—FREIGHT COMMODITY STATISTICS

42. The authority citation for part 1248, subpart A is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

43. The authority citation for part 1248, subpart B is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

PART 1253—RATE-MAKING ORGANIZATION; RECORDS AND REPORTS

44. The authority citation for part 1253 is revised to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703, 11144, and 11145.

PART 1302—EXPORT AND IMPORT SHIPMENTS; RAILROADS

45. The authority citation for part 1302 is revised to read as follows:

Authority: 49 U.S.C. 884.

PART 1331—APPLICATIONS UNDER 49 U.S.C. 10706 AND 13703

46. The authority citation for part 1331 is revised to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703.

47. The heading for part 1331 is revised to read as set forth above.

[FR Doc. 97–25640 Filed 9–25–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 092297B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 1997, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notice to advise the State of New Jersey that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective 0001 hours September 24, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 978–281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percentage allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1997 calendar year was set equal to 11,111,298 lb (5,040,000 kg) (March 7, 1997, 62 FR 10473). The percentage allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,858,363 lb (842,939 kg) for 1997.

Section 648.100(d)(2) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1996, a total of 2,369,134 lb (1,074,621 kg) were landed in New Jersey. The amount allocated for New Jersey landings in 1996 was 1,858,363 lb

(842,939 kg), creating a 510,771 lb (231,682 kg) overage that was deducted from the amount allocated for landings in that State during 1997 (July 15, 1997, 62 FR 37741). The resulting 1997 quota for New Jersey is 1,347,592 lb (611,257 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that the State of New Jersey has attained its quota for 1997, the Regional Administrator has determined based on dealer reports and other available information, that the State's commercial quota has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours September 24, 1997, further landings of summer flounder in New Jersey by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1997 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective on September 24, 1997, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12286.

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

Dated: September 22, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–25625 Filed 9-24-97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 187
Friday, September 26, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation Model 8GCBC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 87–18–09, which currently requires inspecting (one-time) the sides of the front and rear wood spars for compression cracks on certain American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes, and repairing or replacing any wood spar with compression cracks. The proposed AD would require installing inspection holes on the top and bottom wing surfaces, repetitively inspecting the front and rear wood spars for damage, repairing or replacing any damaged wood spar, and installing inspection covers. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes, spacer holes, or nail holes; or loose or missing rib nails. The proposed AD results from in-flight wing structural failure on one of the affected airplanes that was in compliance with the one-time inspection requirement of AD 87–18–09. The actions specified by the proposed AD are intended to prevent damage in the wood spar wing from going undetected, which could result in in-flight structural failure of the wing with consequent loss of control of the airplane.

DATES: Comments must be received on or before November 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday and Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7697; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–37–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 87–18–09, Amendment 39–5725, currently requires inspecting (one-time) the sides of the front and rear wood spars for compression cracks on American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes, repairing or replacing any wood spar with compression cracks, and re-inspecting immediately after any incident involving wing damage. AD 87–18–09 was the result of three accidents involving ACAC Model 8GCBC airplanes where compression cracks in the wood spar caused in-flight structural failure of the wing.

Wood compression cracks are failures of wood fibers on a plane perpendicular to the wood fiber longitudinal axis. Repetitive high stress can initiate these compression cracks on the top or bottom surface of the wing spar adjacent to doubler plate glue lines and rib nail holes. These high stress conditions can occur during crop dusting, banner and glider tow operations, turbulence, and rough field or float operations. Compression cracks can also initiate if the wing contacts the ground. Compression cracks can initiate at either the top or bottom surface of the spar depending on the bending loads (either upward or downward) at impact.

Actions Since Issuance of Previous Rule

In-flight structural failure of the wing recently occurred on an ACAC Model 8GCBC airplane that was initially inspected as required by AD 87–18–09. A possible contributing factor of this accident was an undetected compression crack on the right wing front spar.

Review of data acquired from inspections of several ACAC Model 8GCBC airplanes indicate that wood spar compression cracks can occur without previous wing damage. The data indicates that detection of a compression crack on the sides of the spar is unlikely, unless the crack is in an advanced state of propagation. Based

on this data, the FAA believes that repetitive inspections are necessary.

Relevant Service Information

The FAA has reviewed and approved the technical contents of ACAC Service Letter 406, dated March 28, 1994, and ACAC Service Letter 417, dated August 14, 1997. ACAC Service Letter 406 includes procedures for conducting a detailed visual inspection of both the front and rear wood wing spars for cracks; compression cracks; longitudinal cracks through the bolt holes, spacer holes, or nail holes; and loose or missing rib nails (referred to as damage hereon). ACAC Service Letter 417 includes procedures for installing inspection holes and surface covers and assuring that all applicable lower surface drain holes are installed.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent damage in the wood spar from going undetected, which could result in in-flight structural failure of the wing with consequent loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ACAC Model 8GCBC airplanes of the same type design, the FAA is proposing an AD to supersede AD 87–18–09. The proposed AD would require installing inspection holes on the top and bottom wing surfaces, repetitively inspecting the front and rear wood spars for damage, repairing or replacing any damaged wood spar, and installing surface covers.

Accomplishment of the proposed actions would be as follows:

—Installations: in accordance with ACAC Service Letter 417, dated August 14, 1997;

—Inspections: in accordance with ACAC Service Letter 406, dated March 28, 1994; and

—Spar Repair and Replacement, as applicable: in accordance with Advisory Circular (AC) 43–13, Acceptable Methods, Techniques and Practices; or other data that the FAA has approved for spar repair and replacement

Difference Between This Proposed AD and ACAC Service Letter 406

ACAC Service Letter 406, dated March 28, 1994, specifies the same inspections as are proposed in this notice of proposed rulemaking (NPRM). The differences between the service letter and NPRM are:

—The service letter specifies the proposed action within the next 30 days or 10 flight hours and at each 100 hour/annual inspection thereafter. The FAA has determined that a more realistic compliance and enforceable compliance time would be to require the proposed action within 3 calendar months after the effective date of the AD, and thereafter at intervals not to exceed 12 calendar months or 500 hours time-in-service (TIS), whichever occurs first; and

—The service letter applies to all ACAC 7 and 8 series airplanes, whereas the NPRM applies only to ACAC Model 8GCBC airplanes. The FAA is currently reviewing the service history of all of the ACAC airplane models specified in ACAC Service Letter 406. Based on this review, the FAA may initiate additional rulemaking action in the future on the airplane models other than the Model 8GCBC airplanes. This potential action may propose the same actions as the proposed AD with either the same or different compliance times, or may propose entirely different actions altogether.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in calendar time and hours TIS. Although the unsafe condition specified in the proposed AD is a result of airplane operation, operators of the affected airplanes utilize their airplanes in different ways.

For example, an operator may utilize his/her airplane 50 hours TIS in a year while utilizing the aircraft in no or very little crop dusting operations, banner and glider tow operations, or rough field or float operations. This airplane operator would obviously experience less of a chance of high crack propagation than the airplane operator that utilizes his/her airplane 300 hours TIS in a year regularly in heavy crop dusting operations, banner and glider tow operations, or rough field or float operations. However, this airplane could have pre-existing and undetected wood spar damage that occurred during previous operations. In this situation, the damage to the wood spar would propagate at a level that depends on the operational exposure of the airplane and severity of the wood spar damage.

To assure that compression cracks do not go undetected on the wood spars of the affected airplanes, the FAA has determined that an initial 3 calendar month compliance time should be used. Repetitive actions would be accomplished every 12 calendar months or 500 hours TIS, whichever occurs first.

Cost Impact

The FAA estimates that 261 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours (Installations: 5 workhours; Initial Inspection: 1 workhour) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $292 per airplane, provided that each airplane would only need 11 additional standard inspection hole covers per wing (total of 22 additional standard covers per airplane). If the airplane would require the installation of more inspection covers (i.e., a result of previous non-factory wing recover work), the cost could be slightly higher. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $170,172 or $652 per airplane.

This cost figure is based on the presumption that no affected airplane owner/operator has accomplished the installations or the initial inspection. The FAA has no knowledge of any owner/operator of the affected airplanes that has already accomplished the installations and initial inspection.

The cost figure also does not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur over the life of his/her airplane. However, each proposed repetitive inspection would cost substantially less than the initial inspection because of the cost of the initial proposed inspection hole and cover installations. The inspection covers allow easy access for the inspection of the wood spars, and the proposed compliance time would enable the owners/operators of the affected airplanes to accomplish the repetitive inspections at regularly scheduled annual inspections.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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 Airworthiness Directive (AD) 87–18–09, Amendment 39–5725, and by adding a new AD to read as follows:

American Champion Aircraft Company: Docket No. 97–CE–37–AD; Supersedes AD 87–18–09, Amendment 39–5725.

Applicability: Model 8GCBC airplanes, all serial numbers, certificated in any category, that are equipped with wood wing spars.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, repaired, or reconfigured in the area subject to the requirements of this AD. For airplanes that have been modified, altered, repaired, or reconfigured 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 (e) 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 in the body of this AD, unless already accomplished.

To prevent damage in the wood spar wing from going undetected, which could result in in-flight structural failure of the wing with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish the following:

(1) Install inspection holes in the top and bottom surface of each wing in accordance with American Champion Aircraft Corporation (ACAC) Service Letter 417, dated August 14, 1997. Assure that all drainage holes are installed as depicted in this service letter, and install drainage holes as necessary.

(2) Inspected (detailed visual) both the front and rear wood wing spars for cracks; compression cracks; longitudinal cracks through the bolt holes, spacer holes, or nail holes; and loose or missing rib nails (referred to as damage hereon). Accomplish these inspections in accordance with ACAC Service Letter 406, dated March 28, 1994.

(3) If any spar damage is found, prior to further flight, accomplish the following:

(i) Repair or replace the wood wing spar in accordance with Advisory Circular (AC) 43–13, Acceptable Methods, Techniques and Practices; or other data that is approved by the FAA for wing spar repair or replacement.

(ii) If the wing is recovered, accomplish the installations required by paragraph (a)(1) of this AD, as applicable.

(4) Install inspection hole covers on the top and bottom surface of the wing in accordance with ACAC Service Letter 417, dated August 14, 1997.

(b) Within 12 calendar months or 500 hours TIS (whichever occurs first) after accomplishing all actions required by paragraph (a), all subparagraphs included, of this AD, and thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first, accomplish the inspection, repair, replacement, and installation required by paragraphs (a)(2), (a)(3) as applicable; including its subparagraphs; and (a)(4) of this AD.

Note 2: The affected airplanes are not certificated for acrobatic maneuvers. AD 87–18–09 required a placard prohibiting acrobatic maneuvers in addition to the existing operational placard. The FAA encourages owners/operators of the affected airplanes to keep this placard installed on their airplanes.

(c) If any of the affected airplanes are involved in an incident involving wing damage after the effective date of this AD, prior to further flight, accomplish the inspection, repair, replacement, and installation required by paragraphs (a)(2), (a)(3), as applicable; including its subparagraphs; and (a)(4) of this AD.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon Avenue, Des Plaines, Illinois 60018.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

(2) Alternative methods of compliance approved in accordance with AD 87–18–09 (superseded by this action) are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 87–18–09, Amendment 39–5725.

Issued in Kansas City, Missouri, on September 22, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25607 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 970903222–7222–01]

RIN 0691–AA28

International Services Surveys: BE–93 Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules to amend the reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons.

The BE–93 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to

identify and evaluate market opportunities.

The change to the BE–93 annual survey contained in these proposed rules is to add coverage of general use computer software royalties and license fees. This change will consolidate on one form all transactions in intangible rights between U.S. and unaffiliated foreign persons. Previously, royalties and license fees related to general use computer software were included on the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons, and all other royalties and license fees were included on the BE–93. Placing general use computer software royalties and license fees together with other royalties and license fees on the BE–93 will eliminate the possibility that some respondents would have to examine their accounting records on royalties and license fees for purposes of responding to two separate surveys. In addition, the consolidation will improve consistency with current international standards for the compilation of balance of payments accounts, which include general use computer software royalties and license fees in the same category as all other royalties and license fees.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before November 10, 1997.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230, or hand delivered to room M–100, 1441 L Street, N.W., Washington, DC 20005. Comments will be available for public inspection in room 7005, 1441 L Street, N.W., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 6060–9800.

SUPPLEMENTARY INFORMATION: These proposed rules amend 15 CFR Part 801 by revising paragraph 801.9(b)(5)(i) to set forth revised reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that ''The President shall, to the extent he deems necessary and feasible— * * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *'' In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–93 is an annual survey of U.S. royalty and license fee transactions for intangible rights with unaffiliated foreign persons. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The change to the BE–93 annual survey contained in these proposed rules is to add coverage of general use computer software royalties and license fees. In the past, annual data on such fees and royalties were collected as part of an all-inclusive computer and data processing services category on the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons, and classified in ''other services'' in the U.S. balance of payments. However, this required some respondents to examine their accounting records on royalties and license fees for purposes of responding to two separate surveys and also made it impossible to classify these transactions in the most appropriate balance of payments category. (Current international standards recommend that computer software royalties and license fees be classified in ''royalties and license fees'' in the balance of payments, rather than in ''other services''.) Thus, BEA is moving coverage of general use computer software royalties and license fees from the BE–22 to the BE–93. To effect this change, this proposed rulemaking strikes language that previously excluded coverage of copyrights and other intellectual property rights related to computer software from the BE–93 rules. Separately, a proposed rulemaking for the BE–22 survey will add language to exclude coverage of computer software royalties and license fees.

Reporting in the BE–93 annual survey is required from all U.S. persons whose total receipts from, or total payments to, unaffiliated foreign persons for intangible rights equaled or exceeded $500,000 during the reporting year. The data are disaggregated by country and by type of intangible right.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0017) has been displayed.

Public reporting burden for this collection of information is estimated to vary from less than one hour to 25 hours, with an overall average burden of 4 hours. This includes time for reviewing the 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 agency, including whether the information will have practical utility; (b) the accuracy of the 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: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0017, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total receipts from, or total payments to unaffiliated foreign persons for intangible rights equaled or exceeded $500,000 during the year. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only one type of royalty or license transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Economic statistics, balance of payments, foreign trade, penalties, reporting and recordkeeping requirements.

Dated: August 26, 1997.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O., 11961 (3 CFR, 1977 Comp. P. 860 as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.9 is amended by revising paragraph (b)(5)(i) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(5) * * *

(i) *Who must report.* Reports on Form BE–93 are required from U.S. persons who have entered into agreements with unaffiliated foreign persons to buy, sell, or use intangible assets or proprietary rights, excluding oil royalties and other natural resources (mining) royalties.

* * * * *

[FR Doc. 97–25613 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 970903223–7223–01]

RIN 0691–AA30

International Services Surveys: BE–22 Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules to amend the reporting requirements for the BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons.

The BE–22 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is the annual follow-on survey to the quinquennial BE–22, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons, which was last conducted for 1996. Together, the two surveys produce a continuous annual time series of data on major types of services that are out of the scope of other international services surveys. In nonbenchmark years, universe estimates of these transactions are derived by adding to annually reported sample data extrapolations of data reported in the benchmark survey by companies exempt from annual reporting. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Two major changes to the BE–22 annual survey are contained in these proposed rules: Coverage of the BE–22 annual survey is expanded to conform with the most recent BE–20 benchmark survey, which covered 1996, and coverage of general use computer software royalties and license fees is dropped. To consolidate on one form all transactions in intangible rights between U.S. and unaffiliated foreign persons, coverage of general use computer software royalties and license fees is being moved from the BE–22 to the BE–93, Annual Survey Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before November 10, 1997.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230, or hand delivered to room M–100, 1441 L Street, N.W., Washington, DC 20005. Comments will be available for public inspection in room 7005, 1441 L Street, N.W., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: These proposed rules amend 15 CFR Part 801 by revising paragraph 801.9(b)(6)(ii) to set forth revised reporting requirements for the BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that ''The President shall, to the extent he deems necessary and feasible—* * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *'' In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–22 survey is an annual survey of selected U.S. services transactions with unaffiliated foreign persons. It is intended to update the results of the BE–20 benchmark survey, which covers the universe of such transactions. In nonbenchmark years, universe estimates of these transactions are derived by adding to annually reported sample data extrapolations of data reported in the benchmark survey by companies exempt from annual reporting. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in, and

promote, international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities for services trade.

In order to bring the BE–22 annual survey into conformity with the 1996 BE–20 benchmark survey, coverage of the BE–22 is expanded to include, for the first time, data on merchanting services (sales only), operational leasing services, selling agent services, and a variety of services included in a new ''other'' selected services category. This category covers satellite photography services, security services, actuarial services, salvage services, oil spill and toxic waste cleanup services, language translation services, and account collection services.

These proposed rules also drop coverage of general use computer software royalties and license fees from the BE–22. In the past, annual data on such fees and royalties were collected as part of an all-inclusive computer and data processing services category on the BE–22, and classified in ''other services'' in the U.S. balance of payments. However, this required some respondents to examine their accounting records on royalties and license fees for purposes of responding to two separate surveys and also made it impossible to classify these transactions in the most appropriate balance of payments category. (Current international standards recommend that computer royalties and license fees be classified in ''royalties and license fees'' rather than ''other services'' in the balance of payments.) Thus, BEA is moving coverage of general use computer software royalties and license fees from the BE–22 to the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons. To effect this change, this proposed rulemaking strikes language that previously included coverage of copyrights and other intellectual property rights related to computer software on the BE–22. Separately, a proposed rulemaking for the BE–93 survey will add language to include coverage of computer software royalties and license fees.

Reporting in the BE–22 annual survey is required from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $1,000,000 in any of the services covered during the reporting year. Those meeting this criterion must supply data on the amount of their total sales or total purchases of each type of service in which their transactions exceeded this threshold amount. Except for sales of merchanting services, the data are also disaggregated by country. U.S. persons with purchases or sales during the reporting year of $1,000,000 or less in a given type of covered service are asked to provide, on a voluntary basis, estimates only of their total purchases or total sales, as appropriate, for the given type of service.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control Number; such a Control Number (0608–0060) has been displayed.

Public reporting burden for this collection of information is estimated to vary from 4 to 500 hours, with an overall average burden of 11.5 hours. This includes time for reviewing the 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 agency, including whether the information will have practical utility; (b) the accuracy of the 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: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0060, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only it total sales or purchases transactions with unaffiliated foreign persons in a covered type of service exceed $1,000,000 during the year. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only type of service; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Economic statistics, balance of payments, foreign trade, penalties, reporting and recordkeeping requirements.

Dated: August 26, 1997.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 860 as amended by E.O. 12013 (3 CFR 1997 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.9 is amended by revising paragraph (b)(6)(ii) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(6) * * *

(ii) *Covered services.* With the exceptions given below, the services covered by this survey are the same as those covered by the BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1996, as listed in § 801.10(c) of this part. The exceptions are elimination of coverage of general use computer software royalties and license fees from computer and data processing

services, and the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services.

* * * * *

[FR Doc. 97–25614 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–246250–96]

RIN 1545–AV13

Public Disclosure of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the public disclosure requirements of section 6104(e) of the Internal Revenue Code. The proposed regulations provide guidance for a tax-exempt organization required to make its application for tax exemption and annual information return available for public inspection. The proposed regulations also provide guidance for a tax-exempt organization required to comply with requests made in writing or in person from individuals who seek a copy of those documents. The proposed regulations describe how a tax-exempt organization can make those documents widely available and, therefore, not be required to provide copies in response to individual requests. The proposed regulations address the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign and guidance on the applicable procedures to obtain relief. This document also provides notice of a public hearing.

DATES: Written comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for February 4, 1998, beginning at 10 a.m. must be submitted by December 26, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–246250–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–246250–96), Courier's Desk, Internal Revenue Service, Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael B. Blumenfeld, (202) 622–6070; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by November 25, 1997. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3. This information is required to enable a tax-exempt organization to comply with section 6104(e) of the Internal Revenue Code. Under section 6104(e), a tax-exempt organization is required to make its application for tax exemption and its annual information returns available for public inspection. In addition, a tax-exempt organization is required to comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, to make its documents widely available. The requirement that a tax-exempt organization make its application for tax exemption and annual information returns available for public inspection and comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, make the documents widely available, will enable the public to obtain information about the tax-exempt organization. Under section 6104(e), a tax-exempt organization is permitted to file an application for relief from the requirement to provide copies if the organization reasonably believes it is the subject of a harassment campaign. The information a tax-exempt organization provides when filing an application for a determination that it is subject to a harassment campaign will be used by the IRS to make such determination. The collection of information is required to obtain relief from the requirement to comply with requests for copies if such requests are part of the harassment campaign. The likely respondents and/or recordkeepers are tax-exempt organizations. The burden for recordkeeping and for reporting is reflected below.

Estimated total annual recordkeeping burden: 551,000 hours.

Estimated average annual burden per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 1,100,000.

Estimated total annual reporting burden: 500 hours.

Estimated average annual reporting burden per respondent: 29 minutes.

Estimated number of respondents: 1050.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 301) relating to the section 6104(e) disclosure requirements affecting tax-exempt organizations (organizations described in sections 501 (c) or (d) and exempt from taxation under section 501(a)). Section 10702 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) added subsection (e) to section 6104 of the Internal Revenue Code (Code). Section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to allow public inspection of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to allow public inspection at the organization's principal office (and certain regional or district offices) of its three most recent annual information returns. Each return must be made available for a 3-year period beginning on the date the return is required to be filed or is actually filed, whichever is later. Notice 88–120 (1988–2 C.B. 454), provided tax-exempt organizations with guidance for complying with the section 6104(e) public inspection requirements.

The Taxpayer Bill of Rights 2 (TBOR2), enacted on July 30, 1996, amended section 6104(e) by adding additional requirements. As amended, section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to comply with requests, made either in writing or in person, for copies of the organization's application for recognition of tax-exempt status. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to comply with requests, made either in writing or in person, for copies of the organization's three most recent annual information returns. The organization must fulfill these requests without charge, other than a reasonable fee for reproduction and mailing costs. If the request for copies is made in person, the organization must provide the requested copies immediately. If the request for copies is made in writing, the organization must provide the copies within 30 days. Section 6104(e) also provides that an organization is relieved of its obligation to provide copies upon request if, in accordance with regulations to be promulgated by the Secretary of the Treasury, (1) the organization has made the requested documents widely available or (2) the Secretary of the Treasury determines, upon application by the organization, that the organization is subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest.

In Notice 96–48 (1996–39 I.R.B. 8), the IRS invited comments on the changes made by TBOR2. Twenty-two comments were received and considered in the drafting of this notice of proposed rulemaking. The comments addressed a range of issues, although they made several suggestions in common. Several commentators requested that the guidance on the new disclosure requirements follow the existing guidance on the public inspection requirements provided in Notice 88–120. Several commentators also recommended that the fee charged by the IRS for copies of organization documents be used to establish a reasonable fee for an organization to charge when fulfilling requests for copies of the documents. A number of comments were received concerning the Internet. Most, but not all, of these comments urged that posting an organization's documents on the Internet be treated as making those documents widely available. Finally, several commentators asked for guidance in determining when an organization is subject to a harassment campaign, how to apply for a harassment determination, what kind of relief is available while such an application is pending and the effect of a determination that the organization is the subject of a harassment campaign.

Explanation of Provisions

Overview

The proposed regulations provide guidance concerning the application and returns a tax-exempt organization must make available for public inspection and must supply in response to requests for copies. The proposed regulations also provide guidance on (1) the place and time for making these documents available for public inspection, (2) conditions that may be placed on requests for copies of documents, and (3) the amount, form and time of payment of any fees that may be charged. The regulations also prescribe how an organization can make its application for tax exemption and annual information returns widely available. Finally, the proposed regulations provide guidance on the standards that apply in determining whether an organization is the subject of a harassment campaign and on the applicable procedures for obtaining relief.

Material Required To Be Made Available for Public Inspection and Supplied in Response to a Request for Copies

The proposed regulations specify the documents that a tax-exempt organization must make available for public inspection or supply in response to a request for copies. A tax-exempt organization, including one that is a private foundation, must make its application for tax exemption available. An application for tax exemption includes the application form (such as Form 1023 or Form 1024) and any supporting documents filed by the organization in support of its application. It also includes any letter or document issued by the IRS in connection with the application. Consistent with the guidance provided in Notice 88–120, if an organization filed its application before July 15, 1987, the proposed regulations provide that the organization is required to make available a copy of its application only if it had a copy of the application on July 15, 1987.

A tax-exempt organization, other than one that is a private foundation, must make its three most recent annual information returns available. Generally, an annual information return includes Forms 990, 990–EZ, 990–BL, and Form 1065. It also includes all schedules and attachments filed with the IRS. An organization is not required, however, to disclose the parts of the return that identify names and addresses of contributors to the organization, nor is it required to disclose Form 990–T. The proposed regulations provide rules concerning the documents that must be made available by an organization that is recognized as tax-exempt under a group exemption letter or that files a group return pursuant to § 1.6033–2(d) and Rev. Proc. 80–27, 1980–1 C.B. 677 (or any successor provision). Finally, the proposed regulations provide guidance to an individual denied inspection, or a copy, of an application or a return. In such a case, the individual may provide the IRS with a statement that describes the reason why the individual believes the denial was in violation of legal requirements.

Place and Time Documents Must Be Available for Public Inspection

The proposed regulations provide that a tax-exempt organization must make the specified documents available for public inspection at its principal, regional and district offices. The specified documents generally must be

available for inspection on the day of the request during the office's normal business hours. Consistent with section 6104(e) and Notice 88–120, the proposed regulations provide that an office of an organization will be considered a regional or district office only if it has three or more paid full-time employees (or paid employees, whether part-time or full-time, whose aggregate number of paid hours per week is at least 120). The rules exclude certain sites where the organization's employees perform solely exempt function activities from being treated as a regional or district office. In addition, the proposed regulations prescribe how an organization that does not maintain a permanent office or whose office has very limited hours during certain times of the year can comply with the public inspection requirements. The proposed regulations also provide rules concerning the conditions the organization may impose on public inspections that are consistent with Notice 88–120.

Requirement To Furnish Copy to a Requester

The proposed regulations require that a tax-exempt organization accept requests for copies made in person at the same place and time that the information must be available for public inspection. They also generally require an organization to provide the copies on the day of the request. In unusual circumstances, an organization will be permitted to provide the requested copies on the next business day.

When a request is made in writing, the proposed regulations require that a tax-exempt organization furnish the copies within 30 days from the date it receives the request. If an organization, however, requires advance payment of a reasonable fee for copying and mailing, it may provide the copies within 30 days from the date it receives payment, rather than from the date of the initial request.

The proposed regulations provide guidance as to what constitutes a request, when a request is considered received, and when copies are considered provided. The proposed regulations provide that, instead of requesting a copy of an entire application for tax exemption or annual information return, individuals may request a specific part of either document. Finally, the proposed regulations permit a principal, regional, or district office of an organization to use an agent to process requests for copies.

Reasonable Fee for Providing Copies

The proposed regulations provide that the reasonable fee a tax-exempt organization is permitted to charge for copies may be no more than the fees charged by the IRS for copies of tax-exempt organization tax returns and related documents (currently $1.00 for the first page and $.15 for each subsequent page), plus actual postage costs. The proposed regulations permit an organization to collect payment in advance of providing the requested copies. If an organization receives a written request for copies with no payment enclosed, and the organization requires payment in advance, the organization must request payment within 7 days from the date it receives the request. Payment will be deemed to occur on the day an organization receives the cash, check (provided the check subsequently clears) or money order. The proposed regulations require an organization to accept payment made by cash or money order, and when the request is made in writing, also accept payment made by personal check. An organization is permitted, though not required, to accept other forms of payment. To protect requesters from unexpected fees where a tax-exempt organization does not require prepayment and where a requester does not enclose prepayment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage is in excess of $20.

Making Applications and Information Returns Widely Available

The proposed regulations provide that a tax-exempt organization is not required to comply with requests for copies if the organization has made the requested documents widely available. The proposed regulations specify that an organization can make its application for tax exemption and/or an annual information return widely available by posting the applicable document on the organization's World Wide Web page on the Internet or by having the applicable document posted on another organization's page as part of a database of similar materials. In addition, the proposed regulations provide that the Commissioner may prescribe, by revenue procedure or other guidance, other methods that an organization can use to make its application and/or its return widely available. An organization that makes its application and/or its return widely available must inform individuals who request copies how and where to obtain the requested document. The Treasury and the IRS are interested in comments on additional methods by which applications and returns could be made widely available, including the use of a clearinghouse that maintains a large inventory of documents from many organizations.

Harassment Campaigns

The proposed regulations provide guidance in determining whether a tax-exempt organization is the subject of a harassment campaign. Generally, a harassment campaign exists where an organization receives a group of requests, and the relevant facts and circumstances show that the purpose of the group of requests was to disrupt the operations of the tax-exempt organization rather than to obtain information. The proposed regulations also contain examples that evaluate whether particular situations constitute a harassment campaign and whether an organization has a reasonable basis for believing that a request is part of the harassment campaign. For example, the IRS will not allow organizations to suspend compliance with a request for copies from a representative of the news media even though the organization believes that request is part of a harassment campaign. The proposed regulations also permit an organization to disregard requests in excess of two per month or four per year made by a single individual or sent from a single address. Finally, the proposed regulations provide procedures for requesting a determination that an organization is subject to a harassment campaign, the treatment of requests for copies while a request for a determination is pending, and the effect of such a determination.

Proposed Effective Date

These regulations are proposed to be effective beginning 60 days after publication of these regulations as final regulations.

Special Analyses

Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is certified that the collection of information referenced in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to the collection of information requirements in these regulations, the requirements will not have a significant economic impact on these entities. The average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each tax-exempt

organization. This estimate is based on the assumption that, on average, a tax-exempt organization will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Less than 0.001 percent of the tax-exempt organizations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 1,000 tax-exempt organizations will make its documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 50 tax-exempt organizations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a tax-exempt organization is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that on average it will cost tax-exempt organizations less than $10 per year to comply with these regulations, which is not a significant economic impact.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 4, 1998, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by December 26, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for 26 CFR part 301 is amended by adding entries in numerical order to read as follows:

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

Section 301.6104(e)–2 also issued under 26 U.S.C. 6104(e)(3);

Section 301.6104(e)–3 also issued under 26 U.S.C. 6104(e)(3); * * *

Par. 2. Sections 301.6104(e)–0, 301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3 are added to read as follows:

§ 301.6104(e)–0 Table of contents.

This section lists captions contained in §§ 301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3.

§ 301.6104(e)–1 Public inspection and distribution of annual information returns of tax-exempt organizations (other than private foundations) and applications for tax exemption.

(a) In general.
(b) Definitions.
(1) Tax-exempt organization.
(2) Private foundation.
(3) Application for tax exemption.
(i) In general.
(ii) No prescribed application form.
(iii) Exceptions.
(4) Annual information return.
(i) In general.
(ii) Returns more than 3 years old.
(5) Regional or district offices.
(i) In general.
(ii) Site not considered a regional or district office.
(c) Special rules relating to public inspection.
(1) Permissible conditions on public inspection.
(2) Organizations that do not maintain permanent offices.
(d) Special rules relating to copies.
(1) Time and place for providing copies in response to requests made in person.
(i) In general.
(ii) Unusual circumstances.
(iii) Agents for providing copies.
(2) Request for copies in writing.
(i) In general.
(ii) Time and manner of fulfilling written requests.
(A) In general.
(B) Agents for providing copies.
(3) Request for a copy of parts of document.
(4) Fees for copies.
(i) In general.
(ii) Form of payment.
(A) Request made in person.
(B) Request made in writing.
(iii) Avoidance of unexpected fees.
(iv) Responding to inquiries of fees charged.
(e) Rules relating to documents to be provided by regional and district offices, and local and subordinate organizations.
(1) Documents to be provided by regional and district offices.
(2) Documents to be provided by local and subordinate organizations.
(f) Failure to comply with public inspection or copying requirements.
(g) Effective date.

§ 301.6104(e)–2 Making applications and returns widely available.

(a) In general.
(b) Widely available.
(1) In general.
(2) Internet posting.
(3) Notice requirement.
(c) Effective date.

§ 301.6104(e)–3 Tax-exempt organization subject to harassment campaign.

(a) In general.
(b) Harassment.
(c) Special rule for multiple requests from a single individual or address.
(d) Harassment determination procedure.
(e) Effect of a harassment determination.
(f) Examples.
(g) Effective date.

§ 301.6104(e)–1 Public inspection and distribution of annual information returns of tax-exempt organizations (other than private foundations) and applications for tax exemption.

(a) *In general.* Except as otherwise provided in this section, a tax-exempt organization, including one that is a private foundation, shall make its application for tax exemption (as defined in paragraph (b)(3) of this section) available for public inspection

without charge at its principal, regional and district offices during regular business hours. A tax-exempt organization, other than a private foundation, shall make its annual information returns (as defined in paragraph (b)(4) of this section) available for public inspection without charge in the same offices during regular business hours. Each annual information return shall be made available for a period of three years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later. In addition, except as provided in § 301.6104(e)–2 and § 301.6104(e)–3, an organization shall provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection under this paragraph to any individual who makes a request for such copy in person or in writing. See paragraph (d)(4) of this section for rules relating to fees for copies.

(b) *Definitions.* For purposes of section 6104(e) and the regulations thereunder, the following definitions apply:

(1) *Tax-exempt organization.* The term *tax-exempt organization* means any organization that is described in section 501(c) or section 501(d) and is exempt from taxation under section 501(a).

(2) *Private foundation.* The term *private foundation* means a private foundation as defined in section 509(a).

(3) *Application for tax exemption*—(i) *In general.* The term *application for tax exemption* includes any prescribed application form (such as Form 1023 or Form 1024), all documents and statements the Internal Revenue Service requires an applicant to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the Internal Revenue Service concerning the application (such as a favorable determination letter or a list of questions from the Internal Revenue Service about the application). For example, a legal brief supporting an application, or a response to questions from the Internal Revenue Service during the application process, is a supporting document.

(ii) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes—

(A) The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;

(B) The organization's bylaws or other code of regulations;

(C) The organization's latest financial statements, as of the date the application is submitted, showing assets, liabilities, receipts and disbursements;

(D) Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;

(E) Statements showing the sources of the organization's income and receipts and their disposition; and

(F) Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.

(iii) *Exceptions.* The term *application for tax exemption* does not include—

(A) Any application for tax exemption filed by an organization that has not yet been recognized, on the basis of the application, by the Internal Revenue Service as exempt from taxation for any taxable year;

(B) Any application for tax exemption filed before July 15, 1987 unless the organization filing the application had a copy of the application on July 15, 1987; or

(C) Any material, including the material listed in § 301.6104(a)–1(i) and information that the Secretary would be required to withhold from public inspection, that is not available for public inspection under section 6104.

(4) *Annual information return*—(i) *In general.* The term *annual information return* includes an exact copy of any return filed by a tax-exempt organization pursuant to section 6033. It also includes any amended return filed with the Internal Revenue Service after the date the original return is filed. The copy must include all information furnished to the Internal Revenue Service on Form 990, Return of Organization Exempt From Income Tax, or any version of Form 990 (such as Forms 990–EZ or 990–BL except Form 990–T) and Form 1065, as well as all schedules, attachments and supporting documents, except for the name or address of any contributor to the organization. For example, the annual information return includes Schedule A of Form 990 containing supplementary information on section 501(c)(3) organizations, and those parts of the return that show compensation paid to specific persons (Part VI of Form 990 and Parts I and II of Schedule A of Form 990). The term *annual information return* does not include Schedule A of Form 990–BL, Form 990–T, Exempt Organization Business Income Tax Return or Form 1120–POL, U.S. Income Tax Return For Certain Political Organizations. For purposes of this section and the regulations thereunder, an annual information return does not include the return of a private foundation. See § 301.6104(d)–1 for requirements relating to public disclosure of private foundation annual returns.

(ii) *Returns more than 3 years old.* The term *annual information* return does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later. If an organization has filed an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the Internal Revenue Service.

(5) *Regional or district offices*—(i) *In general.* A regional or district office is any office of a tax-exempt organization, other than its principal office, that has—

(A) 3 or more paid full-time employees; or

(B) Paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

(ii) *Site not considered a regional or district office.* A site is not considered a regional or district office, however, if—

(A) The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and

(B) The site does not serve as an office for management staff, other than managers involved solely in managing the exempt function activities at the site.

(c) *Special rules relating to public inspection*—(1) *Permissible conditions on public inspection.* A tax-exempt organization may have an employee present in the room during an inspection. The organization, however, must allow the individual conducting the inspection to take notes freely during the inspection, and to photocopy the document at no charge, if the individual provides the photocopying equipment at the place of inspection.

(2) *Organizations that do not maintain permanent offices.* If a tax-exempt organization does not maintain a permanent office, the organization shall comply with the public inspection requirements of paragraph (a) of this section by making its application for tax

exemption and its annual information returns, as applicable, available for inspection at a reasonable location of its choice. Such an organization shall permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At the organization's option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. An organization that has a permanent office, but has no office hours or has very limited hours during certain times of the year, shall make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

(d) *Special rules relating to copies*—(1) *Time and place for providing copies in response to requests made in-person*—(i) *In general.* A tax-exempt organization shall provide copies of the documents it is required to provide under section 6104(e) in response to a request made in person at the time and place that it makes its documents available for inspection under paragraph (a) of this section. Except as provided in paragraph (d)(1)(ii) of this section, an organization shall provide such copies to a requester on the day the request is made.

(ii) *Unusual circumstances.* Where unusual circumstances exist such that fulfilling a request on the same business day places an unreasonable burden on the tax-exempt organization, the organization may provide the copies in response to a request made in person on the next business day following the day of the request. Unusual circumstances may include, but are not limited to, receipt of a volume of requests that exceeds the organization's daily capacity to make copies; requests received shortly before the end of regular business hours that require an extensive amount of copying; or requests received on a day when the organization's managerial staff is conducting special duties, such as student registration, rather than its regular administrative duties.

(iii) *Agents for providing copies.* A principal, regional or district office of a tax-exempt organization subject to the requirements of this section may retain a local agent, within reasonable proximity of the applicable office, to process in person requests for copies of its documents. An agent that receives a request for copies must provide the copies within the time and under the conditions that apply to the organization itself. For example, an agent must provide a copy to a requester on the day the agent receives the request. However, an office using such an agent that receives an in-person request for a copy must immediately provide the name, address and telephone number of the local agent to the requester. An organization that notifies an in-person requester of such an agent is not required to respond further to the requester. However, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization if the organization's agent fails to provide the documents as required under section 6104(e).

(2) *Request for copies in writing*—(i) *In general.* A tax-exempt organization must honor a written request for a copy of documents that the organization is required to provide under section 6104(e) if the request—

(A) Is addressed to, and delivered by mail, electronic mail, facsimile, a private delivery service as defined in section 7502(f), or in person, to the principal, regional or district office of the organization; and

(B) Sets forth the address to which the copy of the documents should be sent.

(ii) *Time and manner of fulfilling written requests*—(A) *In general.* A tax-exempt organization receiving a written request for a copy shall mail the copy of the requested documents (or the requested parts of documents) within 30 days from the date it receives the request. If a tax-exempt organization requires payment in advance, it shall provide the copies within 30 days from the date it receives payment. If an organization requiring payment in advance receives a written request without payment or an insufficient payment, the organization must, within 7 days from the date it receives the request, notify the requester of its prepayment policy and the amount due. A request or payment that is mailed shall be deemed (in the absence of evidence to the contrary) to be received by an organization 7 days after the date of the postmark. Requests transmitted to the organization by electronic mail or facsimile shall be deemed received the day the request is transmitted successfully. Copies are deemed provided on the date of the postmark or private delivery mark (or if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). If an individual making a request consents, a tax-exempt organization may provide a copy of the requested document exclusively by electronic mail. In such case, the material is provided on the date the organization successfully transmits the electronic mail.

(B) *Agents for providing copies.* A tax-exempt organization subject to the requirements of this section may retain an agent to process written requests for copies of its documents. The agent shall provide the copies within the time and under the conditions that apply to the organization itself. For example, if the organization received the request first (e.g. before the agent), the deadline for providing a copy in response to a request shall be determined in reference to when the organization received the request, not when the agent received the request. An organization that transfers a request for a copy to such an agent is not required to respond further to the request. However, if the organization's agent fails to provide the documents as required under section 6104(e), the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization.

(3) *Request for a copy of parts of document.* A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any identifiable part, attachment or supporting paper of its application or return. A request for a copy of less than its entire application or less than its entire return must describe the information desired in sufficient detail to enable the organization to identify the desired part of the applicable document without placing an unreasonable burden upon the organization. For example, a request may be limited to those parts of an organization's annual information return that relates to the compensation of the organization's officers and managers.

(4) *Fees for copies*—(i) *In general.* A tax-exempt organization charges a reasonable fee for providing copies only if it charges no more than the per-page copying charge stated in § 601.702(f)(5)(iv)(B) of this chapter (fee charged by the Internal Revenue Service for providing copies to a requester), plus no more than the actual postage costs incurred by the organization to provide the copies. An organization may require that an individual requesting copies of documents pay the fee before the documents are provided. If the organization has provided an individual making a request with notice of the fee, and the individual has not paid the fee within 30 days, or if the individual pays

the fee by check and the check does not clear when deposited, the organization may disregard the request.

(ii) *Form of payment*—(A) *Request made in person.* If a tax-exempt organization charges a fee for copying as permitted under paragraph (d)(4)(i) of this section, it shall accept payment by cash and money order for requests made in person. The organization may accept other forms of payment, such as personal checks or credit cards.

(B) *Request made in writing.* If a tax-exempt organization charges a fee for copying and postage as permitted under paragraph (d)(4)(i) of this section, it shall accept payment by certified check, personal check and money order for requests made in writing. The organization may accept other forms of payment, such as credit cards.

(iii) *Avoidance of unexpected fees.* Where a tax-exempt organization does not require prepayment and a requester does not enclose prepayment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage under paragraph (d)(4)(i) of this section is in excess of $20.

(iv) *Responding to inquiries of fees charged.* In order to facilitate a requester's ability to receive copies promptly, a tax-exempt organization shall respond to any questions from potential requesters concerning its fees for copying and postage. For example, the organization shall inform the requester of its charge for copying and mailing its application for exemption and each annual information return, with and without attachments, so that a requester may include payment with the request for copies.

(e) *Rules relating to documents to be provided by regional and district offices, and local and subordinate organizations*—(1) *Documents to be provided by regional and district offices.* A regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to public inspection and providing copies of its application for tax exemption and annual information returns. However, a regional or district office is not required to make its annual information return available for inspection or for providing copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed, whichever is later.

(2) *Documents to be provided by local and subordinate organizations.* A local organization that does not file its own annual information return (because it is affiliated with a central organization that files a group return pursuant to § 1.6033–2(d)) must make available the applicable annual information returns filed by the central organization. However, a local organization is not required to make its annual information return available for inspection or for providing copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed by the central organization, whichever is later. If a subordinate organization is covered by a group exemption letter, the application for tax exemption the subordinate organization must make available for public inspection and furnish in response to requests for copies is the application submitted to the Internal Revenue Service by its parent or supervisory organization to obtain the group exemption letter, as well as any additional documents submitted in order to cover the subordinate organization under the group exemption letter.

(f) *Failure to comply with public inspection or copying requirements.* If a tax-exempt organization denies an individual's request for inspection or a copy of an application for tax exemption or an annual information return as required under section 6104(e) and this section, and the individual wants to alert the Internal Revenue Service to the possible need for enforcement action, the individual may provide a statement to the Director, Exempt Organizations Division, CP:E:EO, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 that describes the reason why the individual believes the denial was in violation of the requirements of section 6104(e).

(g) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register.**

§ 301.6104(e)–2 Making applications and returns widely available.

(a) *In general.* A tax-exempt organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return pursuant to § 301.6104(e)–1(a) if the organization has made the requested application or return widely available in accordance with paragraph (b) of this section. An organization that makes its application or return widely available must nevertheless make the application or return available for public inspection as required under § 301.6104(d)–1 or § 301.6104(e)–1, as applicable.

(b) *Widely available*—(1) *In general.* A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization uses a method specified in paragraph (b)(2) of this section or in a revenue procedure or other form of guidance issued by the Commissioner, and if the organization satisfies the requirements of paragraph (b)(3) of this section.

(2) *Internet posting.* A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the application or return on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the application or return posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. In order for the application or return to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures for ensuring the reliability and accuracy of the application or return that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the application or return posted on its page. Furthermore, the application or return will be considered widely available only if—

(i) It is posted in the same format used by the Internal Revenue Service to post forms and publications on the Internal Revenue Service World Wide Web page;

(ii) The World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;

(iii) When downloaded and printed in hard copy, the application or return is in substantially the same form as the original application or return, and contains the same information provided in the original application or return filed with the Internal Revenue Service (except information withheld pursuant to § 301.6104(e)–1(b)(4)(i) (the names and addresses of contributors listed on the annual information), Schedule A of Form 990–BL and information on the application for tax exemption required to be withheld under section 6104(a)(1)(D) and § 301.6104(e)–1(b)(3) (trade secrets and similar information)); and

(iv) A person can access and download the application or return without payment of a fee to the organization maintaining the World Wide Web page.

(3) *Notice requirement.* If a tax-exempt organization has made its application for tax exemption and/or an annual information return otherwise widely available it must tell any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization shall provide such notice to the individual immediately. If the request is made in writing, the notice shall be provided within 7 days of receiving the request.

(c) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register.**

§ 301.6104(e)–3 Tax-exempt organization subject to harassment campaign.

(a) *In general.* If the key district director for the district where the organization's principal office is located determines that the organization is the subject of a harassment campaign and compliance with the requests that are part of the harassment campaign would not be in the public interest, a tax-exempt organization is not required to fulfill a request (as otherwise required by § 301.6104(e)–1(a)) for a copy that it reasonably believes is part of the campaign.

(b) *Harassment.* A group of requests for an organization's application for tax exemption or annual information returns is indicative of a harassment campaign if the requests are part of a single coordinated effort to disrupt the operations of a tax-exempt organization rather than to collect information about the organization. Whether a group of requests constitutes a harassment campaign depends on the relevant facts and circumstances. Facts and circumstances that indicate the organization is the subject of a harassment campaign include: a sudden increase in the number of requests; an extraordinary number of requests made through form letters or similarly worded correspondence; evidence of a purpose to deter significantly the organization's employees or volunteers from pursuing the organization's exempt purpose; requests that contain language hostile to the organization; direct evidence of bad faith by organizers of the purported harassment campaign; evidence that the organization has already provided the requested documents to a member of the purported harassing group; and a demonstration by the tax-exempt organization that it routinely provides copies of its documents upon request.

(c) *Special rule for multiple requests from a single individual or address.* A tax-exempt organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period or the first four received within any one-year-period from the same individual or the same address, regardless of whether the key district director has determined that the organization is subject to a harassment campaign.

(d) *Harassment determination procedure.* A tax-exempt organization may apply for a determination that it is the subject of a harassment campaign by submitting a signed application to the key district director for the key district where the organization's principal office is located. The application shall consist of a written statement giving the organization's name, address, employer identification number, and the name, address and telephone number of the person to contact regarding the application, and describing in detail the facts and circumstances that the organization believes support a determination that the organization is subject to a harassment campaign. The organization may suspend compliance with respect to any request for a copy of its documents based on its reasonable belief that such request is part of a harassment campaign, provided that the organization files an application for a determination within 5 days from the day the organization first suspends compliance with respect to a request that is part of the alleged campaign. In addition, the organization may suspend compliance with any request it reasonably believes to be part of a harassment campaign until it receives a response to its application for a harassment campaign determination.

(e) *Effect of a harassment determination.* If the appropriate key district director determines that a tax-exempt organization is the subject of a harassment campaign, such organization is not required to comply with any request for copies that it reasonably believes is part of the campaign. This determination may be subject to other terms and conditions set forth by the key district director. A person (as defined in section 6652(c)(4)(C)) shall not be liable for any penalty under sections 6652(c)(1)(C), (D) or 6685 for failing to timely provide a copy of documents in response to a request covered in a request for a harassment determination if the organization fulfills the request within 30 days of receiving a determination from the key district director that the organization is not subject to a harassment campaign. Notwithstanding the preceding sentence, if the key district director further determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the person (as defined in section 6652(c)(4)(C)) remains liable for any penalties that result from not providing the copies in a timely fashion.

(f) *Examples.* The provisions of this section may be further illustrated by the following examples.

Example 1. V, a tax-exempt organization, receives an average of 25 requests per month for copies of its three most recent information returns. In the last week of May, V is mentioned in a national news magazine story that discusses information contained in V's 1996 information return. From June 1 through June 30, 1997 V receives 200 requests for a copy of its documents. Other than the sudden increase in the number of requests for copies, there is no other evidence to suggest that the requests are part of an organized campaign to disrupt V's operations. Although fulfilling the requests will place a burden on V, the facts and circumstances do not show that V is subject to a harassment campaign. Therefore, V must respond timely to each of the 200 requests it receives in June.

Example 2. Y is a tax-exempt organization that receives an average of 10 requests a month for copies of its annual information returns. From March 1, 1997 to March 31, 1997, Y receives 25 requests for copies of its documents. Fifteen of the requests come from individuals Y knows to be active members of the board of organization X. In the past X has opposed most of the positions and policies that Y advocates. None of the requesters have asked for copies of documents from Y during the past year. Y has no other information about the requesters. Although the facts and circumstances show that some of the individuals making requests are hostile to Y, they do not show that the individuals have organized a campaign that will place enough of a burden on Y to disrupt its activities. Therefore, Y must respond to each of the 25 requests it receives in March.

Example 3. The facts are the same as in *Example 2,* except that during March 1997, Y receives 100 requests. In addition to the fifteen requests from members of organization X's board, 75 of the requests are similarly worded form letters. Y discovers that several individuals associated with X have urged the X's members and supporters, via the Internet, to submit as many requests for a copy of Y's annual information returns as they can. The message circulated on the Internet provides a form letter that can be used to make the request. Both the appeal via the Internet and the requests for copies received by Y contain hostile language. During the same year but before the 100 requests were received, Y provided copies of its annual information returns to the headquarters of X. The facts and circumstances show that the 75 form letter requests are coordinated for the purpose of disrupting Y's operations, and not to collect information that has already been provided to an association representing the requesters' interests. Thus, the fact and circumstances show that Y is the subject of an organized

harassment campaign. To confirm that it may disregard the 90 requests that constitute the harassment campaign, Y must apply to the district director for a determination. Y may disregard the 90 requests while the application is pending and after the determination is received. However, it must respond within the applicable time limits to the 10 requests it received in March that were not part of the harassment campaign.

Example 4. The facts are the same as in *Example 3,* except that Y receives 5 additional requests from representatives of the news media. In the past, some of these representatives have published articles criticizing Y. Some of these articles were hostile to Y. Normally, the Internal Revenue Service will not consider a tax-exempt organization to be reasonable under paragraph (d) of this section if it disregards requests from members of the news media. There are no additional facts that demonstrate that Y could reasonably believe the requests from the news media to be part of X's harassment campaign. Thus, although Y is the subject of a harassment campaign, it must respond within the applicable time limits to the 5 requests that it received from representatives of the news media.

(g) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register.**

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–25492 Filed 9–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Self-Rescue Devices; Use and Location Requirements

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of a draft policy change; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is requesting comments on a change to a proposed policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines. MSHA is publishing this notice to voluntarily afford an opportunity for interested persons to comment on the PPL before its anticipated issuance and effective date.

DATES: Submit all comments on or before November 25, 1997.

ADDRESSES: Comments may be transmitted by electronic mail, fax or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: psilvey@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Milton D. Conley, Division of Health, Coal Mine Safety and Health, (703) 235–1358.

SUPPLEMENTARY INFORMATION: MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters (PPLs). These PPLs are Agency interpretations of what existing MSHA regulations require; they are not new regulations. Therefore, PPLs do not impose new requirements, but explain or clarify how regulations work or apply in a particular situation. These PPLs are used by MSHA inspectors, miners, mine operators, and mining equipment manufacturers as guidance in determining how best to comply with MSHA regulations.

To increase public participation in selected draft PPLs, MSHA is voluntarily requesting comments and suggestions from the public, especially from people who would be directly affected by the PPLs. By this notice, MSHA is affording an opportunity for public comment on a draft PPL that addresses the storage plans for self-contained self-rescuers in underground coal mines. MSHA will consider all timely submitted comments before finalizing the PPL.

I. Background

MSHA standards at 30 CFR 75.1714 require, in part, that each mine operator make available to each miner who enters the mine an approved Self-Contained Self-Rescue (SCSR) device which is adequate to protect the miner for one hour or longer. Section 75.1714–2 addresses use and location requirements for these devices. Under this standard, the devices must be worn, carried, or kept within 25 feet of the miners, unless a storage plan has been approved by the district manager.

The present SCSR storage plan policy, as outlined in Volume V of MSHA's Program Policy Manual, requires the storage cache of one-hour SCSRs to be within 5 minutes travel time of the affected miners on a working section. This policy also allows for up to 10 minutes travel time to the SCSR storage cache for miners in outby areas. The SCSR storage caches are required to contain a number of devices at least equal to the number of miners who may be required to use the devices at any given time. The travel time and distance to the SCSR storage cache is determined by using an Escapeway and Distance Chart.

In 1977, MSHA proposed, as part of its rulemaking development of the SCSR standard, that miners wear, carry or keep the one-hour SCSR devices within 25 feet. Those devices (referred to as first generation SCSRs) measure approximately 10.5″ x 7.75″ x 3.375″ and weigh about 8.5 pounds. By way of comparison, these devices are about three times the size and weight of the approved filter-type self-rescue devices that miners had been required to wear or carry under the previous regulations.

Comments from the mining industry expressed concern that the size and weight of the one-hour SCSR devices available at that time made it impractical for miners to wear, carry or keep these devices within 25 feet, and in some cases exposed miners to a hazard. As a result of these concerns, the final rule includes provisions for MSHA, upon request from a mine operator, to approve storage plans on a mine-by-mine basis, allowing miners to be more than 25 feet from a one-hour SCSR device. See 30 CFR 75.1714–2(e). This provision also requires mine operators to submit specific information to justify a storage plan, and requires miners who are further than 25 feet from their one-hour SCSRs to wear or carry an approved filter-type self-rescuer.

In an effort to improve SCSR technology, a joint government task force was formed in 1984. Its primary charge was to determine if feasible technology existed to develop a one-hour SCSR device that was smaller and lighter than the first generation devices, and therefore could be more readily worn, carried, or kept within 25 feet of miners during the course of their work. The task force members included representatives from the Bureau of Mines (BOM), the National Institute for Occupational Safety and Health (NIOSH), and MSHA. As a part of this effort, the task force members worked with representatives from the various SCSR manufacturers, mine operators' associations, and the United Mine Workers of America (UMWA). This task force work led to the development, by the CSE Corporation of the CSE SR–100, a second generation one-hour SCSR device measuring approximately 7.75″ x 5.5″ x 4.0″ and weighing about 5.7

pounds. This device is approximately one-third smaller in size and weight than the first generation device, is more ergonomically designed, and is therefore easier to wear or carry than the first generation SCSRs. This device was subjected to extensive in-mine testing, and in 1990 received approval by MSHA and NIOSH to be used underground as a Person Wearable-Self-Contained Self-Rescuer (PW–SCSR). Shortly thereafter, Draeger developed the OXY K Plus, and the Mine Safety Appliances Company (MSA) developed the Portal-Pack. These are similar devices that were also approved by MSHA and NIOSH as one-hour SCSR devices. All three devices, CSE SR–100, Draeger OXY K Plus, and MSA Portal-Pack, are approximately the same size and weight, and are referred to by MSHA as second generation PW–SCSR devices.

In May of 1992, the Assistant Secretary for MSHA convened a government, labor, and industry task group to study the wearability of the second generation devices and the SCSR storage plan guidelines. It included representatives from the BOM, NIOSH, MSHA, UMWA, mine operators' associations, and SCSR manufacturers. The final task group report was released in July, 1994. Wearability survey results from miners and inspectors who wore the second generation devices indicated the improved wearability of these devices. However, the size and weight of the second generation devices in some circumstances could create a problem for miners who work in confined spaces such as equipment operators and mechanics. The report also stressed the importance of all miners wearing, carrying or keeping their SCSRs as close as possible at all times. However, where in-mine conditions made this difficult, the task group supported MSHA's approval of storage plans as part of the overall mine evacuation plan.

In January, 1995, as part of the MSHA-sponsored Mine Emergency Preparedness Seminar, Agency personnel met with representatives from SCSR manufacturers, mine operators' associations, and labor representatives. The primary purpose of those discussions was to identify problems the mining community was continuing to face regarding the use of SCSR devices. The participants identified approximately twenty problems that generally were classified as follows: (1) Size and weight of the second generation devices; (2) restrictiveness of the 25-foot rule; and (3) approval of storage plans on a mine-by-mine basis only.

MSHA is continuing to work with manufacturers to encourage the development of a one-hour SCSR device that would be widely accepted as person wearable for all occupations. Comments from the industry indicate that this would mean the development of a one-hour SCSR that is closer to the size and weight of the approved filter self-rescue devices that miners have worn or carried for many years. MSHA recognizes that this will be a difficult task to achieve with present technology. However, we will continue to work with the manufacturers toward that goal. In September 1996, MSA received MSHA/NIOSH approval for the Life-Saver 60 SCSR. This indicates that manufacturers are willing to continue their efforts to further develop SCSR devices that meet the needs of the industry.

II. Draft Policy Objectives

MSHA is interested in receiving comments on the following draft changes to the existing SCSR storage policy. A key objective of these changes is to recognize that improvements in SCSR technology and design over the past 15 years have produced smaller, lighter, and more ergonomically suitable devices. As a result, it is possible for a significant number of miners to wear or carry their one-hour SCSRs, making the devices more readily accessible and available to miners in the event of an emergency. This needs to be reflected in MSHA's policy on SCSR storage.

The draft policy changes are also intended to respond to the concerns expressed by miners, mine operators, and manufacturers that: (1) The size and weight of the second generation SCSR devices still make it difficult for some miners to wear, carry, or keep the devices within 25 feet; (2) the 25-foot requirement in the SCSR standard is too restrictive in that miners who wear, carry, or keep their SCSRs within 25 feet may inadvertently leave the one-hour devices when, for example, they go to the dinner hole, go for supplies, or help move trailing cables; (3) storage plans should be approved on a mine-by-mine basis; (4) MSHA should develop uniform national procedures for approving storage plans; and (5) the policy should not impede the development and use of new technology.

III. Draft Revised Policy

SCSR Storage Location Guidelines

Mine operators who provide their miners with one-hour SCSRs that are worn, carried, or kept within 25 feet of them at all times while underground are not required to have a storage plan, and only one SCSR for each miner underground is needed.

Mine operators, who choose to request approval to store the one-hour SCSRs more than 25 feet from miners, must minimize the travel time to the SCSR storage caches and should deploy additional SCSRs, as outlined below, to ensure that all miners have ready access to one-hour SCSRs in the event of an emergency requiring the use of such devices.

1. Miners Who Work or Travel in Outby Areas of a Mine

Miners who work or travel in outby areas of a mine should either wear or carry their one-hour SCSRs with them at all times. If the mine operator, in consultation with the miners, believes it would be difficult for certain miners to perform their work while wearing or carrying their one-hour devices and wants the one-hour SCSRs to be stored for such miners, the mine operator must request that the district manager approve a storage plan allowing such miners to be more than 25 feet from their one-hour SCSRs. A storage plan for miners who work or travel in outby areas of a mine must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one-hour of protection. It also should: (1) Specify the proposed storage locations for the one-hour SCSRs, which should always be within a distance that can be traveled by miners at a normal pace within five minutes; and (2) set the number of one-hour SCSRs in each of these storage locations to equal or exceed the total number of miners who may be relying on the use of these devices at any given time. The five minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving any storage locations proposed by the mine operator for the one-hour SCSRs, the district manager should verify that any proposed cache would always be within a distance that can be traveled at a normal pace in five minutes or less from these miners.

2. Miners on Continuous or Conventional Mining Sections

Miners who work on or around equipment, such as continuous miner operators, roof bolting machine operators, and shuttle car operators and their helpers, should place their one-hour SCSRs in a readily accessible location on the equipment if they do not wear or carry them. If such miners place their one-hour SCSRs on their

equipment and take the devices with them when they are going to be further than 25 feet from that equipment, a storage plan is not required. Mine operators and manufacturers are encouraged to develop compartments on the equipment to ensure safe storage for the devices.

If the mine operator, in consultation with the miners, believes that it would be difficult or impractical for such miners to take their one-hour SCSRs with them when they may be further than 25 feet from their equipment, the mine operator must request that the district manager approve a storage plan allowing these equipment operators and helpers to be more than 25 feet from their one-hour SCSRs on the equipment. A storage plan for these miners must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Establish a designated section storage cache for one-hour SCSRs, in addition to the SCSRs on the equipment, which should always be within a distance that can be traveled by miners at a normal pace within three minutes; and (2) set the number of one-hour SCSRs in the proposed storage location to equal or exceed the total number of miners that normally work on the affected section. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the designated section storage cache of additional SCSRs proposed by the mine operator, the district manager should verify that the proposed cache would always be within a distance that can be traveled by miners at a normal pace in three minutes or less.

Miners on continuous or conventional sections who perform work that does not include the use of mobile equipment, such as foremen, mechanics, and general laborers, should wear, carry or keep their one-hour SCSRs within 25 feet. If the mine operator, in consultation with the miners, believes that it would be difficult or impractical for such miners to do so, the mine operator must request that the district manager approve a storage plan permitting these miners to be further than 25 feet from their one-hour SCSRs. The plan must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Establish a designated section storage cache for one-hour SCSRs which should always be within a distance that can be traveled by miners at a normal pace within three minutes; and (2) set the number of one-hour SCSRs in the proposed storage location to equal or exceed the total number of such miners that normally work on the affected section. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the designated section storage cache of SCSRs proposed by the mine operator, the district manager should verify that the proposed cache would always be within a distance that can be traveled by miners at a normal pace in three minutes or less.

3. Miners on Longwall Mining Sections

Miners who work on longwall mining sections should wear or carry their one-hour SCSRs. If the mine operator, in consultation with the miners, believes that it would be difficult for longwall miners to perform their work on the longwall face while wearing or carrying their devices, the mine operator must request that the district manager approve a storage plan permitting these miners to be further than 25 feet from their one-hour SCSRs. The plan must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Locate storage caches at the headgate and tailgate ends of the longwall; (2) provide miners on the longwall section with additional SCSRs located on the longwall face so they are no further than three minutes travel time from the one-hour devices; and (3) set the number of one-hour SCSRs located at each headgate and tailgate cache and on the face to equal or exceed the number of miners who normally work on the longwall mining section. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the location for the additional face SCSRs proposed by the mine operator, the district manager should verify that longwall miners would always be within three minutes or less of one-hour devices in the headgate, tailgate, or on the face traveling at a normal pace.

4. Miners Working in Specific Outby Areas

Miners working in specific outby areas, such as belt installers, track layers, and construction workers, should wear, carry, or keep their one-hour SCSRs in a readily accessible location within 25 feet. If the mine operator, in consultation with the miners, believes it is difficult or impractical for these miners to perform their work while wearing or carrying their one-hour devices, the operator must request that the district manager approve a storage plan permitting these miners to be further than 25 feet from their one-hour SCSRs. A storage plan for miners working in specific outby areas of a mine must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Establish a designated storage location for one-hour SCSRs that should always be within a distance that can be traveled by the affected miners at a normal pace within three minutes; and (2) set the number of one-hour SCSRs in the designated storage cache to equal or exceed the number of miners working in the specific area at any given time. The storage plan may describe the typical arrangement proposed since the area where this type of miner works changes periodically. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the storage cache proposed by the mine operator, the district manager should verify that the location would always be within a distance that can be traveled by miners at a normal pace in three minutes or less.

IV. Other Matters Bearing Upon the Safety of Miners

1. Storage Methods and Procedures

Storage plans submitted for district manager approval must contain provisions ensuring that all designated storage caches: (1) Are readily identifiable; (2) are easily accessible and direct miners to the nearest intake escapeway; and (3) are adequately protected from the mining environment.

2. Training

All mine operators who request approval to store more than one type of one-hour SCSR must include a provision in their SCSR storage plans detailing the training to be provided to ensure that all miners have the ability to satisfactorily don and use each type of filter self-rescuer and SCSR device deployed at their mines.

V. Final Policy Effective Date

Mine operators who submit new SCSR storage plans for approval after the date the notice of final policy change is issued should address the factors outlined in 30 CFR Section 75.1714–2(e)(1)(I) through (xi), and should provide the additional SCSR protection set out in the final policy change notice.

Mine operators with currently approved SCSR storage plans who choose to continue storing the one-hour SCSR devices should revise their storage plans to provide the additional SCSR protection set out above within two years from the date of the final notice of policy change.

Dated: September 19, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–25633 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Workshops on Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of workshops.

SUMMARY: The Minerals Management Service (MMS) has reopened the public comment period under a proposed rule published in the **Federal Register** on January 24, 1997 (62 FR 3742), amending the royalty valuation regulations for crude oil produced from Federal leases. In the July 3, 1997, **Federal Register** (62 FR 36030), we published a supplementary notice of proposed rulemaking. We received a variety of comments on the proposed and supplementary proposed rules. In the September 22, 1997, **Federal Register**, we published a summary of these comments, outlined alternatives for proceeding with further rulemaking, and requested public comment on those or other suggested alternatives. Comments on the notice reopening the comment period must be submitted to MMS by October 22, 1997.

MMS will hold three workshops to discuss alternatives for proceeding with the rulemaking. The sole purpose of these workshops is to obtain comments on the alternatives described in the September 22, 1997, **Federal Register** notice, or any new alternatives or modifications to the proposed alternatives for MMS's consideration. We are not requesting comments on the original proposed rule or the supplemental proposed rule, nor on the summary of comments outlined in the September 22, 1997, **Federal Register** notice. Interested parties are invited to attend and participate in these workshops.

DATES: The workshops will be held as follows:

Workshop 1: Lakewood, Colorado, on September 30, 1997, and October 1, 1997, beginning at 9 a.m. each day and ending at 5 p.m. on September 30, 1997, and ending at 3 p.m. on October 1, 1997, Mountain time.

Workshop 2: Houston, Texas, on October 7 and 8, 1997, beginning at 9 a.m. each day and ending at 5 p.m. on October 7, 1997, and 3 p.m. on October 8, 1997, Central time.

Workshop 3: Houston, Texas, on October 14, 1997, beginning at 9 a.m. and ending at 4 p.m. Central time.

ADDRESSES: Workshop 1 will be held at the Golden Hill Office Complex, 12600 West Colfax Avenue, Suite C–300, Lakewood, Colorado 80225–0165; telephone (303) 275–7200. Workshops 2 and 3 will be held in the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032; telephone (281) 987–6802.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; telephone (303) 231–3432; fax number (303) 231–3385; e-Mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: MMS has invited two representatives each from five industry trade associations and from five States to participate in a round table discussion of the alternatives at Workshops 1 and 2. These two workshops will be open to the public to observe the discussions. We ask for the cooperation of States and industry trade associations in limiting the people in attendance so that we may assure a productive dialogue of the alternatives among the round table participants. Workshop 3 will be open to the public without advance registration. We encourage a workshop atmosphere; members of the public are encouraged to participate in a discussion of the alternatives. For building security measures, each person may be required to present a picture identification to gain entry to the meeting.

Dated: September 22, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–25515 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–047]

RIN 2115–AE46

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the Augusta Port Authority's Head of the South Rowing Regatta. The event will be held from 7:00 a.m. to 6:00 p.m. Eastern Standard Time (EST) on November 7 and 8, 1997, on the Savannah River at Augusta, GA. These regulations are necessary for the safety of life on the navigable waters during the event.

DATES: Comments must be received on or before October 27, 1997.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the same address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (803) 724–7621.

The Group Commander maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LTJG M.J. DaPonte, Project Manager, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD7 97–047) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons desiring acknowledgment of receipt of comments

should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at the time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed regulations are needed to provide for the safety of life during the Head of the South Rowing Regatta. There will be up to 6000 participants racing singles, doubles, four and eight person rowing shells on a fixed course. These regulations are intended to promote the safe navigation on the Savannah River immediately before, during, and after the regatta by controlling the traffic entering, exiting, and traveling within the regatta area. The anticipated concentration of spectator vessels poses a safety concern which is addressed in this proposed special local regulation. The proposed regulation would not permit the entry or movement of spectator vessels and other non-participating vessel traffic between a line drawn directly across the Savannah River at mile markers 200.2 and 197.45 on Friday, November 7th and Saturday, November 8th, 1997, between the hours of 6:30 a.m. and 6:30 p.m. EST.

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 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than 3 nautical miles on the Savannah River between mile markers 200.2 and 197.45, entry into which is prohibited for only twelve hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this proposed rule, if adopted, will not have a significant effect upon a substantial number of small entities because it encompasses less than 3 nautical miles on the Savannah River between mile markers 200.2 and 197.45, entry into which is prohibited for only twelve hours on two days.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this action, and has determined pursuant to Section 2.B.2.e(34)(h) of Commandant Instruction M16475.1B, that it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be prepared during the comment period and will be available for inspection and copying after the comment period for this proposed rulemaking has expired.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is proposed for amendment 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–07–047 is added to read as follows:

§ 100.35T–07–047 Head of the South Rowing Regatta, Savannah River at Augusta, GA.

(a) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, GA, between mile markers 200.2 and 197.45. The regulated area encompasses the width of the Savannah River between these two points. All coordinates referenced use Datum: NAD 83.

(b) *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 Group Charleston, SC.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Coast Guard Patrol Commander. After termination of the Head of the South Rowing Regatta on November 7 and 8, 1997, all vessels may resume normal operations.

(d) *Effective Date.* This section is effective from 6:30 a.m. to 6:30 p.m. EST on November 7 and 8, 1997.

Dated: September 18, 1997.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 97–25596 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–31–1–7310b; FRL–5893–5]

Approval and Promulgation of Air Quality Implementation Plans, New Mexico; Recodification of, and Revisions to, the Air Quality Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the recodification of, and revisions to, the New Mexico State Implementation Plan (SIP). The existing Air Quality Control Regulations (AQCR) have been renumbered and reformatted into the New Mexico Administrative Code as required by the New Mexico State Records Center. In addition to having renumbered and reformatted the regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The intended effects of these revisions are to delete obsolete, nonessential, redundant, and technically inadequate regulations; make certain rules and definitions more explicit and; make one particular regulation more closely reflect current New Mexico Environment Department policy.

In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 27, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Reference Docket Number: File Code SIP 1–3–10; NM–90–05. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–2174.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–25503 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42187J; FRL–5748–8]

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the public comment period from September 30, 1997 to December 1, 1997, on the proposed rule published in the **Federal Register** of June 26, 1996 (61 FR 33178)(FRL–4869–1) requiring the testing of 21 hazardous air pollutants (HAPs) for certain health effects. This extension is needed to allow the Agency more time to amend the HAPs test rule proposal to reference eleven new Toxic Substances Control Act (TSCA) test guidelines and make other changes and clarifications to the proposed rule.

DATES: Written comments on the proposed rule must be received by EPA on or before December 1, 1997.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by docket control number (OPPTS–42187A; FRL–4869–1) to: Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically to oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document, all **Federal Register** support documents, and the eleven TSCA test guidelines are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr).

I. Background and General Information

On June 26, 1996 (61 FR 33178), EPA proposed health effects testing, under section 4(a) of TSCA, of the following hazardous air pollutants (HAPs): 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols (3 isomers: *ortho*-, *meta*-, *para*-), diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of enforceable consent agreements (ECAs). These PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to

predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs rule.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996, to January 31, 1997 (61 FR 54383) (FRL–5571–3). This extension was for the purpose of allowing more time for the submission of PK proposals and adequate time for comments on the proposed rule to be submitted after the Agency had responded to the proposals. EPA has received eight PK proposals for diethanolamine, ethylene dichloride, ethylene glycol, hydrogen fluoride, maleic anhydride, phthalic anhydride, 1,2,4-trichlorobenzene, and 1,1,2trichloroethane). In addition, the Agency has received another proposal to develop an ECA for an alternative testing program for methyl isobutyl ketone. EPA has agreed to review the contents of this proposal and to provide comments on its technical merit and relevance to the proposed HAPs testing requirements.

Due to the complexity of the issues raised by the PK proposals and other issues related to test guidelines, EPA successively extended the public comment period (61 FR 67516, December 23, 1996 (FRL–5580–6); 62 FR 9142, February 28, 1997 (FRL–5592–1); 62 FR 14850, March 28, 1997 (FRL–5598–4); 62 FR 29318, May 30, 1997 (FRL–5722–1); 62 FR 37833, July 15, 1997 (FRL–5732–2)) to allow the Agency more time to respond to the PK proposals and to finalize the test guidelines to be referenced in the proposed HAPs test rule. This extension of the comment period is needed to allow the Agency more time to complete work on amending the proposed HAPs test rule.

EPA has completed seven preliminary technical analyses for the PK proposals that were submitted in response to the Agency's solicitation on June 26, 1996. These include HAPs chemicals: hydrogen fluoride, 1,1,2-trichlorethane, ethylene dichloride, maleic anhydride, phthalic anhydride, 1,2,4-trichlorobenzene, and ethylene glycol. Copies of these preliminary technical analyses have been sent to the submitters and placed in the public record for this action (OPPTS–42187B; FRL–4869–1). The Agency intends to provide comments to the submitter of the other PK proposal as soon as possible but in any event prior to the close of the comment period. EPA also recognizes that submitters may need to revise their proposals based on EPA comments. If the Agency decides to proceed with the ECA process, EPA will announce, in the **Federal Register**, one or more public meetings to discuss the proposals and to negotiate ECAs. In that document, the Agency will solicit persons interested in participating in or monitoring negotiations to develop ECAs based on: the PK testing proposals or revisions thereof, EPA's preliminary technical analyses, and additional comments on EPA's preliminary technical analyses provided by the submitters. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

The Agency emphasizes that the submission of proposals to develop ECAs to conduct alternative testing using PK is no guarantee that EPA and the submitters will, in fact, conclude such agreements. Therefore, EPA urges all submitters of PK proposals to comment on the HAPs proposed rule as an activity separate from the PK proposal/ECA process.

On August 15, 1997, EPA promulgated eleven new TSCA test guidelines (62 FR 43820)(FRL–5719–5), codified at 40 CFR part 799, subpart H. These TSCA part 799 test guidelines were developed based on the OPPTS harmonized guidelines that were developed from the OPPTS guideline harmonization process. In the original HAPs proposal and subsequent notices extending the comment period on the rule, EPA indicated that, for the purposes of this rulemaking and testing under TSCA section 4(a), the Office of Pollution Prevention and Toxics (OPPT) intends to reference final TSCA test guidelines developed from the OPPTS harmonized guidelines. The eleven TSCA test guidelines are included in the record for this rulemaking.

EPA is amending the proposed HAPs test rule to reference the eleven new TSCA part 799 test guidelines and to seek comment on the guidelines as referenced in enforceable test standards in the forthcoming amended HAPs proposal. In addition, the amendment will provide a revised economic assessment and describe other changes and clarifications to the proposed test rule. This amendment to the proposed HAPs test rule will be published in the **Federal Register** as soon as possible but in any event no later than December 1, 1997.

II. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number (OPPTS–42187A; FRL–4869–1) (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS–42187A; FRL–4869–1). Electronic comments on the proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 22, 1997.

Charles M. Auer,

Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, EPA is extending the comment period on the proposed rule to December 1, 1997.

[FR Doc. 97–25657 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–4, and 51–6

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule.

SUMMARY: The Committee is proposing to make changes to five sections of its regulations to clarify them and improve the efficiency of operation of the Committee's Javits-Wagner-O'Day (JWOD) Program. The changes are necessary to clarify and expand earlier regulation changes and to eliminate unnecessary regulatory language.

DATES: Submit comments on or before November 25, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–7740. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is proposing to amend § 51–2.4 of its regulations to clarify further that its authorizing statute, the JWOD Act, 41 U.S.C. 46–48c, treats addition of commodities and services to the Procurement List and the establishment by the Committee of a fair market price as two separate functions and applies the requirement for notice and comment rulemaking only to the addition function. This area was first addressed in 1994 (59 FR 59338, Nov. 16, 1994) with the removal of fair market price from the list of suitability criteria for Procurement List additions, in accordance with a 1992 court decision, *McGregor Printing Corporation* v. *Kemp*, 802 F. Supp. 519, 527 (D.D.C), *rev'd on other grounds*, 20 F.3d 1188 (D.C. Cir. 1994). The proposed amendment states that the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination. Accordingly, they will not be addressed when the Committee makes an addition decision. This amendment will not affect the ability of Government and other appropriate parties to comment on proposed fair market prices and price changes in connection with the Committee's fair market pricing process. The Committee also proposes to remove paragraph 51–2.4(a)(4)(C) of its regulations to eliminate one of two essentially redundant statements in § 51–2.4 to the effect that the Committee considers pertinent comments when making its addition decisions.

The Committee also amended paragraphs (b)(6) and (c)(1) of § 51–4.3 of its regulations in 1994 (59 FR 59343) to allow the acceptance of State certifications of blindness or other severe disabilities as documentation of disability, in additions to reports by individual health professionals. Many of these certifications, however, are done by health professionals at local governmental bodies, such as public schools. The proposed amendment would allow acceptance of these certifications.

Paragraph (c) of § 51–4.4 of the Committee's regulations permits nonprofit agencies participating in the JWOD Program to subcontract a portion of the process for providing a commodity on the Procurement List. The proposed amendment would extend this permission to services on the Procurement List, and would specify how the Committee will oversee routine subcontracting of a part of the production process.

Paragraph (c) of § 51–6.12 of the Committee's regulations requires Government contracting activities to provide a 90-day notice when changing the scope of work of a service on the Procurement List. The proposed amendment would make it clear that this notice requirement also applies to situations where the contracting activity converts a service to performance by Government personnel.

Prior to the 1991 revision of the Committee's regulations (56 FR 48974, Sept. 26, 1991), the matters contained in current parts 51–5 and 51–6 were in a single part 51–5, which had a disputes provision applicable to the entire part of the Committee's regulations. The proposed amendment clarifies the disputes provision, § 51–6.14, to state its applicability to both parts 51–5 and 51–6.

Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects in 41 CFR Parts 51–2, 51–4, and 51–6

41 CFR Part 51–2

Organization and functions (Government agencies)

41 CFR Part 51–4

Reporting and recordkeeping requirements.

41 CFR Part 51–6

Government procurement, Handicapped.

For the reasons set out in the preamble, Parts 51–2, 51–4, and 51–6 of Title 41, Chaper 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for Parts 51–2, 51–4, and 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

2. Section 51–2.4 is amended by removing paragraph (a)(4)(C) and adding a sentence to paragraph (b), to read as follows:

§ 51–2.4 Determination of suitability.

* * * * *

(b) * * * Because the Committee's authority to establish fair market prices is separate from its authority to determine the suitability of a commodity or service for addition to the Procurement List, the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination.

PART 51–4—NONPROFIT AGENCIES

3. Section 51–4.3 is amended by revising paragraphs (b)(6) and (c)(1), to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(6) Maintain a file for each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation, or a certification of blindness by a State or local governmental entity.

* * * * *

(c) * * *

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability, or a certification of the disability or disabilities by a State or local governmental entity.

* * * * *

4. Section 51–4.4 is amended by revising paragraph (c), to read as follows:

§ 51–4.4 Subcontracting.

* * * * *

(c) Nonprofit agencies may subcontract a portion of the process for producing a commodity or providing a service on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities. Subcontracting intended to be a routine part of the production of a commodity or provision of a service shall be identified to the Committee at the time the commodity or service is proposed for addition to the Procurement List and any significant changes in the extent of subcontracting must be approved in advance by the Committee.

* * * * *

PART 51–6—PROCUREMENT PROCEDURES

5. Section 51–6.12 is amended by revising paragraph (c), to read as follows:

§ 51–6.12 Specification changes and similar actions.

* * * * *

(c) For services on the Procurement List, the contracting activity shall notify the nonprofit agency furnishing the service and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions of performance will be required, including assumption of performance of the service by the contracting activity.

* * * * *

6. Section 51–6.14 is revised to read as follows:

§ 51–6.14 Disputes.

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by parts 51–5 and 51–6 of this chapter shall be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

Dated: September 23, 1997.

Beverly L. Milkman,

Executive Director

[FR Doc. 97–25610 Filed 9–25–97; 8:45 am]

BILLING CODE 6353–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–203, RM–9132]

Radio Broadcasting Services; Wallace, ID and Lolo, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Hawkeye Radio Properties, Inc., permittee of Station KQWK(FM), Channel 248C2, Wallace, Idaho, requesting the reallotment of Channel 248C2 to Lolo, Montana, as a Class C3 channel, and modification of its authorization accordingly, pursuant to the provisions of § 1.420(i) of the Commission's Rules. Coordinates used for Channel 248C3 at Lolo, Montana, are 46–53–07 and 114–06–30. As Lolo, Montana, is located within 320 kilometers (199 miles) of the Canadian border, the Commission must obtain concurrence of the Canadian government to this proposal.

The petitioner's modification proposal complies with the provisions of § 1.420(i) of the Commission's Rules, and therefore, we will not accept competing expressions of interest in the use of Channel 248C3 at Lolo, Montana, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before November 10, 1997, and reply comments on or before November 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dale A. Ganske, President, Hawkeye Radio Properties, Inc., 5546–3 Century Avenue, Middleton, WI 53562.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–203, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25592 Filed 9–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–194; RM–9128]

Radio Broadcasting Services; Shelley and Island Park, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Woodcom, Inc. seeking the substitution of Channel 292C1 for Channel 300C at Shelley, Idaho, and modification of its authorization (File No. BPH950123MH) to specify operation on the lower class channel. Additionally, to accommodate the requested substitution at Shelley, petitioner requests the substitution of Channel 300C for Channel 293C at Island Park, Idaho, for which an application is pending. Coordinates designated for Channel 292C1 at Shelley are 43–06–45 and 112–29–34. Coordinates specified for Channel 300C at Island Park are those set forth in the pending application at Island Park at 44–10–31 and 111–25–47.

Additionally, petitioner's modification proposal is consistent with the provisions of § 1.420(g)(2) of the Commission's Rules as an additional

equivalent channel can be allotted to Shelley in the event other parties express an interest in the proposal. Therefore, we will not accept competing expressions of interest in the use of Channel 292C1 at Shelley.

DATES: Comments must be filed on or before November 3, 1997, and reply comments on or before November 18, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Esq., 4606 Charleston Terrace, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–194, adopted August 27, 1997, and released September 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25595 Filed 9–25–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1111

[STB Ex Parte No. 527 (Sub–No. 1)]

Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings

AGENCY: Surface Transportation Board; DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 12, 1997, the Surface Transportation Board issued an Advance Notice of Proposed Rulemaking soliciting comments on how the complaint and investigation procedures at 49 CFR part 1111 should be modified to reflect the Board's adoption of *Simplified Rate Guidelines.*[1] Based on the comments received, the Board proposes to amend part 1111 to facilitate the processing of cases using *Simplified Rate Guidelines.* Comments are invited.

DATES: Comments are due November 10, 1997.

ADDRESSES: Send comments referring to STB Ex Parte No. 527 (Sub-No. 1) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1567. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Board is charged with expediting the processing of rate complaint proceedings. Under 49 U.S.C. 10704(c), we are required to make a determination as to the reasonableness of a challenged rate within 9 months after the record closes if the determination is based on stand-alone cost (SAC) evidence, and within 6 months if it is based upon a simplified methodology adopted pursuant to 49 U.S.C. 10701(d)(3). On October 1, 1996,[2] we adopted rules to expedite the handling of complaints challenging the reasonableness of railroad rates using SAC,[3] including the generally applicable procedural schedule of 49 CFR 1111.8 that requires completion of the evidentiary phase of a SAC case in 7 months. We declined to adopt a procedural schedule to govern the filing of evidence in cases using the then unadopted *Simplified Rate Guidelines* procedures. Rather, we decided to consider the adoption of regulations covering such cases following completion of the *Simplified Rate Guidelines* rulemaking.

On December 31, 1996, we adopted simplified evidentiary guidelines in *Simplified Rate Guidelines* to determine the reasonableness of rail rates on captive traffic where the *Coal Rate Guidelines* could not be practicably applied. Subsequently, by Advance Notice of Proposed Rulemaking, served February 12, 1997 (62 FR 6508), we solicited comments on whether a general procedural schedule applicable to cases processed under the *Simplified Rate Guidelines* could be promulgated (and, if so, what that schedule should be), or whether we should delay the adoption of a general procedural schedule and proceed on a case-by-case basis until all concerned acquire some experience utilizing the new guidelines.[4]

Comments were filed by the Association of American Railroads (AAR), the National Industrial Transportation League (NITL), Barbara R. Kueppers, and the United Transportation Union-Illinois Legislative Board (UTU–ILB).

Positions of the Parties

AAR acknowledges that the choice of guidelines (*Coal Rate Guidelines* or *Simplified Rate Guidelines*) must be made at the outset of a case. However, AAR sees no need to adopt a set timeframe, such as the 45-day schedule suggested in *Simplified Rate Guidelines* (at 38) for deciding whether a case should proceed under the *Coal Rate Guidelines* or the simplified procedures. AAR claims that a 45-day schedule would be unfair because it would give a shipper unlimited time to prepare its initial case while giving the defendant only two weeks to analyze complainant's case and prepare opposing evidence.[5] AAR also notes that

[1] *Rate Guidelines—Non-Coal Proceedings,* Ex Parte No. 347 (Sub-No. 2) (STB served Dec. 31, 1996), *pet. for rehearing and reconsideration denied* (STB served Sept. 24, 1996), *pet. for judicial review pending sub nom., Association of Am. Railroad* v. *Surface Transp. Bd.,* No. 97–1020 (D.C. Cir. filed Jan. 10, 1997).

[2] *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527, published in the **Federal Register** on October 8, 1996, (61 FR 52710), modified by decision served November 15, 1996.

[3] SAC is one of four constraints on railroad pricing adopted in *Coal Rate Guidelines—Nationwide,* 1 I.C.C.2d 520 (1985). Notwithstanding its title, *Coal Rate Guidelines* procedures are not limited to coal cases. Rather, the guidelines are the preferred method of evaluating the reasonableness of any rate.

[4] *Simplified Rate Guidelines* suggested that procedural schedules should initially be set on a case-by-case basis. *Id.* at 38 n.145.

[5] Under the 45-day schedule, the defendants would have 15 days after the complaint is filed to oppose use of the simplified procedures. Complainant would have 10 days to respond to the railroad position, and the Board would have 20 days to make its determination.

the 45-day schedule appears to conflict with the requirement for a conference of the parties required by 49 CFR 1111.9.[6] AAR prefers convening a conference of the parties shortly after a complaint is filed to allow the parties to develop a schedule, subject to Board approval, for determining whether the *Simplified Rate Guidelines* can be used. In addition, because no case has yet been processed using *Simplified Rate Guidelines,* AAR suggests that we set procedural schedules for the filing of evidence on a case-by-case basis until sufficient experience is gained and the need for a general schedule becomes apparent.

NITL argues that, with minor modifications, complaints seeking to invoke *Simplified Rate Guidelines* can be handled under the procedures established at 49 CFR part 1111.[7] NITL supports deciding within 45 days a request for invocation of the simplified procedures. It proposes that the factors that must be included in a complaint seeking to invoke the *Simplified Rate Guidelines* be specifically listed in 49 CFR 1111.1(a) so that potential complainants are given appropriate notice of both the availability of, and requirements for, the use of the simplified procedures.[8]

Finally, NITL recommends that the Rules of Practice should include a reference to the procedures established in 49 CFR 1244.8 regarding access to the Waybill Sample data. It suggests that complainants request access to the Waybill Sample simultaneously with the filing of the complaint so that complainant can complete discovery and prepare its opening statement within 120 days of the filing of the complaint as specified at 49 CFR 1111.8.

Ms. Kueppers argues that the Board should provide for a cost-efficient means of accessing data through discovery.[9] In particular, she proposes that discovery be completed in 6 months where rate reasonableness is the sole issue in a proceeding. When rate reasonableness is combined with other issues, she proposes that the procedural schedule be determined on a case-by-case basis, allowing for discovery related to other issues. Ms. Kueppers also argues that, because individuals in small shipping organizations have a variety of duties, it is difficult to determine a universally appropriate schedule (such as 120 days in stand-alone cases) for small shippers to prepare and present a case. She contends that small shippers should be afforded flexibility in scheduling.

The UTU–ILB offers no comments on procedural matters but states that it continues to support traditional rate comparisons as the best test of rate reasonableness for the small shipper, port, or community. It adds that it will await the issuance of a notice of proposed rulemaking before making any other recommendations.

Discussion

We appreciate the comments of the parties and have attempted to incorporate as many of their suggestions as practical in our proposal. We propose to include in our regulations the information that a complainant should supply when seeking to test the reasonableness of a rate using the *Simplified Rate Guidelines.* We also propose to establish a schedule for determining whether the *Simplified Rate Guidelines* can be used in a particular case. Additional, minor changes are being proposed. We are not proposing to adopt at this time a general procedural schedule for processing rate complaints under the *Simplified Rate Guidelines,* but rather intend to proceed on a case-by-case basis until we gain more experience using the new guidelines.

Simplified Rate Guidelines (at 37) recognized that a determination as to which guidelines should be used in a particular case must be decided at the outset of the case.[10] If the simplified procedures are sought, the complainant ''must present sufficient information to show that [use of the *Coal Rate Guidelines*] is not available * * * . [T]his information should be included in the initial complaint, so as not to delay the case.'' *Id. Simplified Rate Guidelines* enumerated 9 evidentiary factors (listed in note 8, *supra*), which should be included in a complaint. We propose to modify section 1111.1(a), as suggested by NITL, to specifically list the 9 evidentiary factors that a complaint seeking to use the *Simplified Rate Guidelines* should address.[11] This will ensure that anyone contemplating filing a complaint is fully aware of the factors that must be addressed in its initial pleading. We also propose to make certain technical changes to that section.

As noted, AAR and NITL differ on whether we should prescribe a 45-day period for deciding whether the simplified procedure should be used in deciding rate reasonableness. To comply with the Congressional directive to expedite rate cases, the determination of whether to apply the simplified procedures must be made quickly at the outset of a case. Based on the comments of the parties, however, we propose to modify slightly the 45-day schedule suggested in *Simplified Rate Guidelines.* Instead of 15 days, the railroad would have 20 days to file opposition to the

[6] Under 49 CFR 1111.9(b), in stand-alone cost complaints, the parties are to discuss procedural matters within 7 days after a complaint is filed. Under 49 CFR 1111.9(a), in all other complaint proceedings, the parties shall discuss procedural issues within 7 days after an answer is filed.

[7] NITL suggests that a conference of the parties could be held within 7 days of the filing of the answer as specified in 49 CFR 1111.9(a).

[8] *Simplified Rate Guidelines* (at 37–38) requires that a complaint seeking to invoke the simplified procedures should contain:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and O–D [origin-destination] pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a SAC presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

AAR notes that factor 7 includes costs associated with ''preparing necessary jurisdictional threshold and market dominance evidence.'' It asserts that these costs are common to both simplified procedure and CMP cases and are therefore not relevant to determining which procedure to follow. We note that while the costs are common to both types of cases, the purpose of including them is to determine and weigh the costs of presenting a rate case under either CMP or the simplified procedures.

[9] She requests that parties enter into a confidentiality agreement within 7 days after a complaint is filed. If they are unable to concur on an agreement, they can request that the Board impose a confidentiality agreement. Within 10 days of a confidentiality agreement being in place, the parties are to disclose the information required in Rule 26 of the Federal Rules of Civil Procedure, and the carrier shall provide to complainant its waybill tapes.

[10] No special showing is needed to use Coal Rate Guidelines because, where available, those guidelines must be used.

[11] Currently, 49 CFR 1111.1(a) states in relevant part:

In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether * * * the reasonableness of the rate should be examined using constrained market pricing or simplified standards to be adopted pursuant to 49 U.S.C. 10701(d)(3). The complainant should specify the basis for this assertion.

use of the simplified procedures, the same due date for filing an answer to a complaint. 49 CFR 1111.4 (a) and (b). This proposal gives a railroad more time to respond and necessitates only one filing, rather than two, in response to a complaint. The complainant would have 10 days to respond, and the Board would have 20 days in which to determine whether the *Simplified Rate Guidelines* should be used. *See* proposed new section 1111.9 (providing for a 50-day schedule).[12]

We believe that such an approach balances the needs of the parties. While the time frame is relatively short, we note that we are not deciding the case on the merits but simply determining whether to use the *Simplified Rate Guidelines*. This short schedule is necessary if we are to proceed with the expeditious handling of the complaint.

Both the AAR and the NITL see a scheduling conflict between holding the procedural conference (49 CFR 1111.9) and determining whether to apply the simplified procedures. AAR, while not wanting a schedule for determining whether to apply the *Simplified Rate Guidelines*, wants a conference of the parties to be held ''shortly after the complaint is filed.'' NITL also favors a conference and supports proceeding under 49 CFR 1111.9(a), under which the parties are required to meet, or discuss by telephone, discovery and procedural matters within 7 days after an answer to a complaint is filed.[13] To avoid convening a conference during the time that parties are preparing pleadings addressing the appropriateness of using the *Simplified Rate Guidelines*, we propose to modify 49 CFR 1111.9(a) so that the conference will be held 12 (instead of 7) days after the answer is filed (day 32) and the report to the Board will be due 19 (instead of 14) days after the answer is filed.[14]

The parties disagree about whether we should prescribe a general procedural schedule to govern the submission of evidence for cases processed under the *Simplified Rate Guidelines*. AAR and, to some extent, Ms. Kueppers favor a case-by-case approach. NITL supports the use of the procedural schedule applicable to stand-alone cost cases with certain modifications.[15]

We agree with AAR and Ms. Kueppers that it seems best to proceed initially on a case-by-case basis. Without any experience processing cases using the *Simplified Rate Guidelines*, it is difficult to develop a generally applicable procedural schedule. Nevertheless, the goal of section 10704 is to expedite the processing of rate cases. As a general matter, we believe that the evidentiary phase of a non-coal case should take less than the 7-month time frame for large coal cases. Therefore, we will generally require that discovery be expedited.

Finally, NITL requests that the Rules of Practice cross reference the regulation at 49 CFR 1244.8 concerning access to the Waybill Sample.[16] We believe, however, that such redundance is unnecessary.[17]

The Board certifies that the rules, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed rules should result in the quicker processing of rail complaints using the simplified procedures. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1111

Administrative practice and procedure, Investigations.

Decided: September 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49 chapter X, part 1111 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

1. The authority citation for part 1111 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

2. Section 1111.1 is proposed to be amended by revising the last two sentences of paragraph (a) and adding paragraphs (a)(1) through (a)(9) to read as follows:

§ 1111.1 Content of formal complaints; joinder.

(a) * * * In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate be examined using constrained market pricing or simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and origin-destination (O–D) pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a SAC presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

* * * * *

[12] We propose to renumber current section 1111.9 as section 1111.10.

[13] Within 14 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

[14] Because we propose to redesignate § 1111.9 as § 1111.10, these modifications are in proposed section 1111.10(a).

[15] *See* 49 CFR 1111.8.

[16] Ms. Kueppers requests that the carrier provide its waybill tapes to the complainant. Our rules at section 1244.8, however, provide for a party to request from the Board the Waybill Sample, which is a statistically valid sample. We believe that this process is a more efficient method of obtaining information. We also believe, at least for the present, that Ms. Kueppers' request for discovery and confidentiality rules is unnecessary and can be handled on a case-by-case basis.

[17] In *Simplified Rate Guidelines* (at 41) we denied access to the Waybill Sample prior to the filing of the complaint. However, parties can request access to such data simultaneously with the filing of a complaint. The Board will act promptly on these requests.

§ 1111.8 [Amended]

3. In § 1111.8 remove the phrase ''section 1111.9(b)'' and add ''§ 1111.10(b)'' in its place.

4. Redesignate § 1111.9 as § 1111.10 and add new § 1111.9 to read as follows:

§ 1111.9 Procedural schedule to determine whether to use simplified procedures.

Absent a specific order by the Board, the following procedural schedule will apply in determining whether to grant a request under § 1111.1(a) to use the simplified procedures (the remainder of the procedural schedule will be determined on a case-by-case basis):

Day 0 Complaint filed, discovery period begins.

Day 20 Defendant's answer to complaint and opposition to use of simplified procedures due.

Day 30 Complainant's response to use of simplified procedures due.

Day 50 Board's determination of whether simplified procedures should be used.

5. In newly designated § 1111.10 paragraph (a) is revised to read as follows:

§ 1111.10 Meetings to discuss procedural matters.

(a) *Generally*. In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

* * * * *

[FR Doc. 97–25642 Filed 9–25–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 091997B]

RIN 0648–AJ17

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 15

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 15 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before November 25, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 15, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis, and for copies of a minority report submitted by two members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266, Phone: 813–228–2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 15 would: Replace the current system of commercial red snapper permit endorsements and trip limits with a system of two classes of transferrable commercial red snapper licenses and associated trip limits; starting in 1998, split the red snapper commercial fishing season into two time periods, the first commencing February 1 with two-thirds of the annual quota available and the second commencing on September 1 with the remainder of the annual quota available; open the red snapper commercial fishery at noon on the first of each month and close it at noon on the 15th of each month during the commercial season; prohibit the possession of reef fish in excess of the bag limit on a vessel that has on board, or is tending, a trap other than a fish, stone crab, or spiny lobster trap; increase the minimum size limit for vermilion snapper; close the commercial fishery for greater amberjack each year during the period March through May; remove sea bass, grunts, and porgies from management under the FMP; and remove certain species from the aggregate bag limit for reef fish.

A proposed rule to implement Amendment 15 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule and may publish it in the **Federal Register** for public review and comment.

Comments received by November 25, 1997, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 15. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 15 or on the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 22, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–25556 Filed 9–23–97; 1:25 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 187
Friday, September 26, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on October 9, 1997, in Newport, Oregon, at the Hatfield Marine Science Center (Meeting Room 9/Fireside Room), 2030 S. Marine Science Drive, Newport, OR. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Water quality/303d designations (expected effects on Federal forest management in the northern Oregon Coast Range); (2) PAC subcommittees' (Adaptive Mgmt. Area, media, timber, water quality/fish) reports and recommendations to PAC for consideration and discussion; and (3) Monitoring Report (results of Province-wide monitoring will be summarized). All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two 15-minute open public forums are scheduled for 9:30 a.m. and 2:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Trish Hogervorst, Public Affairs Officer, Bureau of Land Management, at (503) 375–5657, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: September 19, 1997.

James R. Furnish,

Forest Supervisor.

[FR Doc. 97–25532 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Williamette PIEC Advisory Committee will meet on Thursday, October 16, 1997. The Advisory Committee will be taking a field trip to BLM lands in the North Santiam River Basin. The field trip will begin at the USDI Salem BLM Office; 1717 Fabry Rd SE; Salem, Oregon 97306; phone (503) 375–5642. The Advisory Committee is scheduled to meet at 9:00 a.m. and will leave at approximately 9:15 a.m. The tentative agenda includes: An overview of the Province timber sale monitoring process, an example of timber management practices under the Northwest Forest Plan, and a review and discussion of watershed management and water quality issues in the North Santiam basin.

Bus transportation will be provided for Advisory Committee members, alternates, and presentors. Maps of the field trip route and stops will be available for the public. Public participants will be responsible for their own transportation. Opportunities for brief public input will be provided at each stop. Written comments may be submitted prior to the meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT:

For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: September 22, 1997.

Darrel L. Kenops,

Willamette Forest Supervisor.

[FR Doc. 97–25582 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR, part 1951, subpart N, Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing.

DATES: Comments on this notice must be received by November 25, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Senior Loan Specialist, Rural Housing Service, USDA, STOP 0782, Room 5321, South Agriculture Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0743, STOP 0782, Telephone: (202) 720–1613.

Title: ''Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing''.

OMB Number: 0575–0104.

Expiration Date of Approval: January 31, 1998.

Type of Request: Intent to extend the currently approved information collection and record keeping requirements.

Abstract: The regulation promulgates the policies and procedures for actions to be taken in cases where unauthorized financial assistance in the form of a loan, grant, interest subsidy benefit created through use of an incorrect interest rate, interest credits, or rental assistance has been extended to a Multiple Family Housing borrower or grantee by RHS.

Estimate of Burden: 1.14 hours.

Respondents: Individuals, state or local governments, and small businesses or organizations.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 1.5.

Estimated Total Annual Burden on Respondents: 800 hours.

Copies of this information collection can be obtained from the Barbara Williams, Regulations and Paperwork Management Branch, at (202) 720–9734.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Housing Service, including whether the information will have practical utility; (b) the accuracy of Rural Housing Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 16, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–25528 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 27, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Case, Radio Set
5895–00–889–3856
NPA: Border TM Industries, Inc., El Paso, Texas

Illuminator/Corrector Stx and Refills
7520–01–386–2407
7520–01–386–2441
7510–01–390–0704
7510–01–390–0705
7510–01–390–0708
7510–01–390–0709
NPA: San Antonio Lighthouse, San Antonio, Texas

Belt Extender, Equipment
8465–00–NIB–0033
8465–00–NIB–0034
(Requirements for the U.S. Army Natick Research & Development Center, Natick, MA)
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Service

Janitorial/Custodial, Eisenhower Library Complex, 200 S.E. 4th Street, Abilene, Kansas
NPA: Occupational Center of Central Kansas, Salina, Kansas

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–25608 Filed 9–25–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 27, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 16, June 6, 20, July 7 and August 8, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 27011, 31065, 33585, 26256 and 42745) of proposed additions to the Procurement List.

The Following Comments Pertain to Paper, Perforator, Desk

Comments were received from the current contractor for the perforator. The contractor claimed that addition of the perforator to the Procurement List would have a severe adverse impact on the company's sales, as it is part of the company's core business, and would require closing a dedicated production line, with consequent layoffs and loss of use of equipment.

The contractor's Government business includes two perforators, only one of which is being added to the Procurement List. The percentage of the contractor's total sales which this

perforator represents is below the level which the Committee normally considers to constitute severe adverse impact. The contractor will continue to have the opportunity to produce the other perforator for the Government, so the equipment and workers on its dedicated production line will not be idle.

Addition of this perforator to the Procurement List will create employment for several persons with severe disabilities. These persons as a group have a very high unemployment rate, so it is likely that any of the contractor's workers who may be displaced by the Committee's action will have a better chance of finding other work than these persons with severe disabilities.

The Following Comments Pertain to Linen Management Service, Norfolk, Virginia

Comments were received from the current contractor for this service. The contractor claimed that the proposed addition to the Procurement List does not meet the Committee's regulatory requirements on contractor impact and nonprofit agency capability, and cited court decisions on these points.

The contractor claimed that the proposed addition will have a severe adverse impact on the sales of the local plant which is performing the service. However, the Committee's regulation on contractor impact requires the Committee to look at the entire corporate structure of a contractor, including parent and affiliated companies, in making a determination. This addition to the Procurement List represents a very small percentage of the total sales of the corporate structure of this contractor, which is a very large business, even when the impact of other Procurement List additions on the contractor and its long record as a contractor for this service are taken into account.

The contractor also claimed that the addition would require it to discharge a number of workers and would result in a loss in annualized projected revenue. The number of workers and the anticipated loss far exceeds the number of jobs the service is expected to create for people with severe disabilities, and the anticipated revenue loss is well above the annual contract value for the service. Accordingly, the Committee does not believe the contractor's figures to be credible. Any actual loss suffered by the contractor in these areas is outweighed by the creation of jobs for people with severe disabilities, who experience very high unemployment rates.

The contractor cited a 1970 court decision to the effect that the Committee's program was not intended to have any impact on commercial businesses. That decision construed an earlier version of the Committee's statute. The statute was substantially amended in 1971, and the same court in a 1978 decision noted the legislative intent of the new statute was to allow impact on commercial entities. The contractor impact for this Procurement List addition is far below the figure allowed by that court decision.

The contractor also claimed that the nonprofit agency could not be deemed capable of providing the service in compliance with strict requirements applicable to it, such as local water quality and discharge standards. The contractor cited another court decision which requires the Committee to have evidence that the particular nonprofit agency has the capability to provide the service, rather than relying on generalized statements about the capability of people with severe disabilities. The nonprofit agency is currently successfully providing the same service to another Federal installation in the same area, and the Government contracting activity which is responsible for the service now being added to the Procurement List has informed the Committee that it has inspected the nonprofit agency and found it capable of providing this service. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies

(Requirements for Lackland Air Force Base, Texas)

Cross ''Solo'' Pen and Refill
7520–01–424–4846
7520–01–424–4881
7520–01–424–4860
7520–01–424–4848
7520–01–424–4871
7510–01–425–6802

Perforator, Paper, Desk
7520–00–224–7589

Services

Janitorial/Custodial, Plains High School/Visitor Center, Jimmy Carter National Historic Site, Plains, Georgia

Laundry Service, Evans U.S. Army Community Hospital, (all general laundry excluding uniforms), Fort Carson, Colorado

Linen Management Service, Fleet and Industrial Supply Center, (standard grade linen), Norfolk, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–25609 Filed 9–25–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 72–97]

Foreign-Trade Zone 32—Miami, Florida Application for Foreign-Trade Subzone Status; Hewlett-Packard Company (Computer and Related Electronic Products) Miami, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Miami Foreign-Trade Zone Inc., grantee of FTZ 32, requesting special-purpose subzone status for the manufacturing and distribution facilities (computers, printers, measurement devices, medical products and related products) of the Hewlett-Packard Company (Hewlett-Packard), located in Miami, Florida. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the

regulations of the Board (15 CFR part 400). It was formally filed on September 17, 1997.

The Hewlett-Packard facilities are located at two sites (765,438 square feet on 45 acres) in Miami, Florida: Site 1 (21 acres, 313,438 sq.ft.)—located at 6701/6703 Northwest 7th Street; Site 2 (23 acres, 452,000 sq.ft. (including a proposed building))—located at 10205 NW 19th Street and 10200 NW 21st Street.

The facilities (240 employees) are used for storage, manufacture, and distribution for import and export of computers and related devices, printers, electronic test and measurement devices, electronic medical products, and related electronic products and components. A number of components are purchased from abroad (an estimated 40% of value on manufactured products), including printed circuit boards, silicon wafers, rectifiers, integrated circuits, memory modules, CD–ROM drives, disk drives, scanners, hard drives, keyboards, monitors/displays (CRT and LCD type), LEDs, speakers, microphones, belts, valves, bearings, plastic materials, industrial chemicals, sensors, filters, resistors, transducers, fuses, plugs, relays, ink cartridges, toner cartridges, switches, fasteners, cards, transformers, DC/electric motors, magnets, modems, batteries, cabinets, power supplies, cables, copper wire, power cords, optical fiber, casters, cases, labels, and packaging materials (1997 duty range: free-14.2%). (Full zone procedures are not being sought for certain linear motion bearings, display tubes and parts, optical fiber, or photonic components.)

Zone procedures would exempt Hewlett-Packard from Customs duty payments on foreign components used in export production. On its domestic sales, Hewlett-Packard would be able to choose the lower duty rate that applies to the finished products (free-13.2%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 25, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 10, 1997.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce Export Assistance Center, 5600 Northwest 36th St., Suite 617, Miami, Florida 33166.

Dated: September 18, 1997.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 97–25645 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 5, 1997, in the case of *E.I. DuPont de Nemours & Co., Inc.,* v. *United States,* 954 F. Supp. 263 (CIT 1997), the United States Court of International Trade affirmed the Department of Commerce's second redetermination on remand arising out of the final determination of sales at less than fair value in the antidumping duty investigation of polyethylene terephthalate film, sheet and strip from the Republic of Korea. As there is now a final and conclusive court decision in this action, we are amending the final determination in this matter and will instruct the U.S. Customs Service to change the ''all others'' cash deposit rate.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT:

Magd A. Zalok or Kris Campbell at (202) 482–4162 or (202) 482–3813, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department of Commerce (''the Department'') published the antidumping duty order and amended final determination of sales at less than fair value for polyethylene terephthalate film, sheet, and strip from the Republic of Korea. See Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea (56 FR 16305, April 22, 1991), as amended (56 FR 25669, June 5, 1991). E.I. DuPont de Nemours & Company, Inc. Hoechst Celanese Corp., and ICI Americas, Inc., (''petitioners''), filed an action challenging the final determination. On December 6, 1993, the Court of International Trade (CIT) remanded certain of the challenged issues to the Department. The CIT directed the Department to re-examine the following issues in light of the Federal Circuit's decision in *IPSCO, Inc.* v. *United States,* 965 F.2d 1056 (Fed. Cir. 1992) (''IPSCO Appeal''): (1) Methodology for calculating costs of production of off-grade PET film reported by Cheil Synthetics, Inc. (''Cheil'') and SKC Limited (''SKC''); (2) methodology for calculating Cheil's costs of recycled scrap film; and (3) SKC's product-specific cost accounting methodology. The CIT also directed the Department to reconsider its methodology for adjustments to United States price (''USP'') for value-added taxes (''VATs''). See *E.I. DuPont de Nemours & Co., Inc.* v. *United States,* 841 F. Supp. 1237 (CIT 1993).

On April 7, 1994, pursuant to the remand order, the Department announced its remand results. (*See* Final Remand Determination Pursuant to Court Order, *E.I. DuPont de Nemours & Co., Inc.* v. *United States,* Court No. 91–07–00487.) For calculating Cheil's cost of production of off-grade PET film, the Department adjusted Cheil's submitted costs to reflect actual, product-specific costs. In the case of SKC, the Department revised its methodology consistent with the *IPSCO Appeal* decision and recalculated SKC's costs of production of off-grade PET film based on quantity rather than value. The Department did not adjust its cost methodology for Cheil's recycled PET film because it reasoned that the recycled film was not a co-product, and therefore, the rationale of the *IPSCO Appeal* decision was not applicable. The Department also accepted SKC's submitted costs adjusted to reflect actual product-specific costs because it determined that SKC's verified cost

accounting methodology was reasonable. Finally, the Department revised the treatment of VATs to comport with its then-existing methodology used in Certain Stainless Steel Wire rod from France, 58 FR 6885 (Dec. 29, 1993) by adjusting USP for tax by multiplying the home market tax rate by the USP at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax.

With exception of the department's methodology for VAT adjustments, the CIT upheld all aspects of the Department's remand redetermination. See *E.I Dupont de Nemours & Co., Inc., ICI Americas, Inc.,* v. *United States,* 932 F. Supp. 296 (CIT 1996). The CIT concluded that the Department's VAT adjustments were not consistent with the Federal circuit court's ruling in *Federal Mogul Corp.* v. *United States,* 66 F.3d 1572 (Fed. Cir. 1995) and remanded this issue to the Department for recalculation of the VAT adjustments.

On May 17, 1996, the Department filed the results of the second remand redetermination. In accordance with the VAT methodology adopted after the *Federal Mogul* decision, the Department added the tax amount paid in the home market to USP for the same merchandise.

On February 5, 1997, the CIT upheld the second remand results. *E.I. DuPont de Nemours & Co., Inc.* v. *United States,* 954 F. Supp. 263 (CIT 1997). The period to appeal has expired and no appeal was filed. Therefore, as there is now a final and conclusive court decision in this action, we are amending our final determination.

Amendment to Final Determination

Pursuant to section 516A(e) of the Act, we are now amending the final determination in polyethylene terephthalate film, sheet and strip from the Republic of Korea. The recalculated weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
SKC	13.92
Cheil	36.33
All others	21.50

We will instruct U.S. Customs to change the existing ''all others'' cash deposit requirements accordingly. We note that this order has been revoked with respect to Cheil (61 FR 35177) and SKC's current cash deposit rate is based upon an administrative review conducted subsequent to this segment of the proceeding. Therefore, this amended redetermination does not affect the cash deposit rates for either SKC or Cheil.

Dated: September 22, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–25646 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082797C]

Marine Mammals; Permit No. 993 (P597)

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

ACTION: Issuance of amendment.

SUMMARY: Notice is hereby given that photography permit No. 993 issued to Mr. Michael Kundu, Arcturus Adventure Communications International, 5516 64th Place, NE, Marysville, WA 98270, has been amended to extend the expiration date of the permit to August 1, 1998.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.39 of the regulations of the governing the taking and importing (50 CFR part 216) of marine mammals.

Addresses: Documents may be reviewed in the following locations:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Regional Office, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); and

Regional Administrator, Alaska Regional Office, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Dated: September 12, 1997.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24923 Filed 9-25-97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

September 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58038, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on September 29, 1997, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Adjusted twelve-month limit [1]
340/640	1,382,638 dozen.
347/348	1,659,395 dozen.
351/651	277,915 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Guaranteed Access Levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25583 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

September 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Uruguay Round Agreements Act.

The current limit for Category 648 is being increased for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 4034, published on January 28, 1997.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the May 7, 1997 MOU, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on September 26, 1997, you are directed to increase the limit for Category 648 to 74,103 dozen [1], as provided for by the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25584 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Center of Military History.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: 23 October 1997.

Place: U.S. Army Center of Military History, Franklin Court Building, Room 203, 1099 14th Street, Northwest, Washington, DC 20005–3402.

Time: 0900–1600 (23 Oct 97).

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

Purpose of the Meeting: The committee will review the Army's historical activities for FY 97 and those projected for FY 98 based upon reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

FOR FURTHER INFORMATION CONTACT: All communication regarding this advisory committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Franklin Court Building, 1099 14th Street, Northwest, Washington, DC 20005–3402; telephone number (202) 761–5402.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the 23 October meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the

committee chairman may allow public presentations of oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–25636 Filed 9–25–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Program for Qualifying Department of Defense Ground Passenger Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: Reference previous Notice (Request for comments) in **Federal Register**, Vol. 62, No. 61, dated March 31, 1997, page 15165, provided a 60 day comment period on the proposed changes to the Military Bus Agreement (MBA). Comments and Military Traffic Management Command (MTMC's) responses to those comments are addressed accordingly and are provided below. The MBA is amended to improve the standards for qualifying carriers transporting Department of Defense (DOD) passengers by bus, van and limousine service. The improvements are prepared under a new basic Agreement. The changes affect all current and future ground passenger carriers transporting for the DOD. A copy of the final Agreement between Military Traffic Management Command (MTMC) and ground passenger carriers is available upon request.

EFFECTIVE DATE: This new basic Agreement is effective 1 October 1997.

FOR FURTHER INFORMATION CONTACT: Leesha Saunders at 703–681–6393; Headquarters, Military Traffic Management Command, ATTN: MTOP–QQ, Room 630, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION:

Comments: The following comments were received from Industry:

Comment 1. (II–2 Carrier Application., c. & Department of Transportation (DOT) Rating) Continental Air Transport commented on the regulatory procedures for their individual company in relation to the DOT safety fitness rating for all carriers applying to the Military Bus Program. The carrier operates ten passenger vans. These vehicles are too small to be regulated by the Department of Transportation (DOT); therefore, they cannot obtain a safety fitness rating from DOT.

Response 1. These objections reflect concerns relevant to a van carrier like Continental Air Transport. The DOT's safety fitness rating requirements for the MBA is for carriers whose vehicles seat 16 passengers or more including the driver. Under the present and future MBA application requirements, carriers whose vehicles seat a maximum of 15 passengers are only required to submit copies of their vehicle licenses with their applications. Van & limousine carriers applying for approval from deregulated states must submit a notarized letter indicating they meet all state requirements.

Comment 2. (III–8 Driver Qualifications) Continental Air Transport Company comments that the state of Illinois and the DOT do not require their drivers to have Commercial Driver's Licenses (CDL). In addition, the carrier comments it is not possible to get a CDL specifically for their vehicle capacity. The carrier further explains its driving staff undergoes in-house training including the National Safety Council's Defense Driving Course. Recommended change is that the statement ''* * * hold a current commercial driver's license * * *'' be deleted from this section and maintain the following wording: ''* * * be properly qualified and licensed and operate the type of equipment owned by the carrier.''

Response 2. Continental Air Transport Co. comment refers to carriers with vehicles seating less than 16 passengers. Many companies making application to the MBA operate vehicles that seat more than 16 passengers and those drivers are required by federal and local regulations to have and carry their CDL. Therefore, the following sentence change is made: ''Drivers, in addition to meeting the DOT's requirements, must be legal residents of the United States, be able to communicate in English, hold a current commercial driver's license or be properly qualified and licensed to operate the type of equipment owned by the carrier.''

Comment 3. (III–9 Financial Statements) Continental Air Transport Co. believes that carriers would have problems providing copies of their financial statements to MTMC for qualifying for the MBA.

Response 3. The proof of the financial stability of carriers is to reduce the risk to the Department of Defense of approving carriers who are not financially able to provide safe and reliable passenger service. Thus, financial information is required at time of application or upon request of the MTMC. However, the requirement for Certified Public Accountant audited statements is removed.

MTMC is the agency established within the DOD for the procurement of land transportation from commercial carriers for DOD passengers, their families and impedimenta, in domestic movements procured by the MTMC and DOT Transportation Offices. In light of current deregulation and changing federal regulations, MTMC is modifying the passenger policies in order to improve the current qualification program. The MBA is the standards of service carriers must meet for MTMC approval including the Federal Motor Carrier Safety Regulations and DOD passenger requirements. Under the new Agreement carriers must show compliance with federal, state and DOD passenger safety requirements. All bus, van and limousine carriers currently approved by MTMC will be required to re-sign the new MBA and provide proof of insurance, company drug testing, financial and additional information newly established under the revised Amendment.

Alan M. Cox,

Colonel, U.S. Army, Acting Chief, Qualification Division.

[FR Doc. 97–25635 Filed 9–25–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 30, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before November 25, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of

Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 22, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement

Title: Performance Report—Training Personnel for the Education of Individuals with Disabilities

Abstract: These Performance Reports collect information required of grantees receiving Federal funds under Part D of the Individuals with Disabilities Education Act (IDEA), required by P.L. 101–476 and 102–119, through fiscal year 1997 grants. Training data will be summarized in the Office of Special Education and Rehabilitative Services' (OSERS'') Annual Report to Congress, including data on special education and related services personnel, as well as parents trained.

Additional Information: Recently, the U.S. Department of Education's Office of the General Counsel rendered a legal opinion that, because the new law takes effect beginning Fiscal Year 1998, the old law governs reporting requirements for grantees who were funded for Fiscal Years 1996 and 1997. This being the case, data reports are still required by law to be filed with the Department by the grantees no later than November 30, 1997, for the Fiscal Year 1996 budget reporting period. In order to accomplish the mailout to grantees of the data collection forms and instructions, an emergency extension is urgently sought for this package so that the Department can comply with the law. Approval is needed to permit the mailout to occur on October 15. To secure the support services of the Department's mailout contractor, OMB approval needs to be obtained no later than September 30, 1997.

Frequency: Annually

Affected Public: Businesses or other for-profits; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs

Annual Reporting and Recordkeeping Hour Burden:

Responses: 894

Burden Hours: 1,192

[FR Doc. 97–25577 Filed 9–25–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–2170–001]

William W. Berry; Notice of Filing

September 22, 1997.

Take notice that on July 30, 1997, William W. Berry filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director: ISO New England Inc.
Director: Scott & Stringfellow Financial Corp.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25559 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–703–000]

Black Hills Power and Light Company; Notice of Filing

September 22, 1997.

Take notice that on July 31, 1997, Black Hills Power and Light Company tendered for filing its Open Access Transmission Tariff filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25564 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4236–000]

Boston Edison Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Boston Edison Company (Boston Edison), Massachusetts, submitted for filing revised sheet Nos. 123 through 125 of its open-access transmission tariff. Boston Edison submits these revisions to conform with the July 1, 1997 filing by the New England Power Pool in Docket Nos. 0A97–608–000, et al. Boston Edison requests waiver of the 60-day notice provision to allow an effective date of September 1, 1997.

Boston Edison states that this filing has been posted in accordance with the Commission's regulations and that copies of the filing have been served upon Boston Edison's wholesale customers, the Massachusetts Department of Public Utilities, and all persons listed on the official service lists in Docket No. OA96–70–000, ER97–1328–000 and ER97–2340–000.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25551 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3063–000]

Alger B. Chapman; Notice of Filing

September 22, 1997.

Take notice that on July 30, 1997, Alger B. Chapman filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director: ISO New England Inc.
Vice Chairman: ABN AMRO Chicago Corporation
Chairman of the Board; Chief Executive Officer: ABN AMRO Investment Services Inc.

Any person desiring to be heard or to protests said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25566 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2610–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 6, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25541 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2827–000]

Cinergy Services, Inc., Notice of Filing

September 22, 1997.

Take notice that on August 6, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25542 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3069–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 6, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25544 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3764–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25546 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3790–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25547 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3792–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25548 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER90–24–001]

Commonwealth Atlantic Limited Partnership; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Commonwealth Atlantic Limited Partnership tendered for filing a Notification of Material Change in Facts of Commonwealth Atlantic Limited Partnership in connection with the merger of Destec Energy, Inc., and NGC Corporation.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25539 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–158–001]

Entergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its compliance filing in the above-captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25561 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3580–000]

First Power, LLC; Notice of Issuance of Order

September 23, 1997.

First Power, LLC (First Power) submitted for filing a rate schedule under which First Power will engage in wholesale electric power and energy transactions as a marketer. First Power also requested waiver of various Commission regulations. In particular, First Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by First Power.

On September 8, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by First Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, First Power 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 First Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 8, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25616 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3888–000]

The Green Power Connection, Inc.; Notice of Issuance of Order

September 23, 1997.

The Green Power Connection, Inc. (Green Power) submitted for filing a rate schedule under which Green Power will engage in wholesale electric power and energy transactions as a marketer. Green Power also requested waiver of various Commission regulations. In particular, Green Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Green Power.

On September 8, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Green Power 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, Green Power 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 Green Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 8, 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. 97–25617 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4168–000]

Griffin Energy Marketing, L.L.C.; Notice of Filing

September 22, 1997.

Take notice that on September 9, 1997, Griffin Energy Marketing, L.L.C. tendered for filing an amendment to its August 12, 1997, filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25550 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–50–000]

Heartland Energy Services, Inc.; Notice of Filing

Take notice that on September 17, 1997, Heartland Energy Services, Inc. (HES), filed additional information regarding the nature of the jurisdictional contracts being transferred from HES to the joint venture, Cargill-IEC, L.L.C.

Any person desiring to be heard or to protest said filings 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 285.214). All such motions or protests should be filed on or before September 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any 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.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–25538 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4343–000]

Idaho Power Company; Notice of Filing

September 22, 1997.

Take notice that on September 8, 1997, Idaho Power Company tendered for filing an amendment in the above-referenced docket. No. 11.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25555 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4250–000]

Illinois Power Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Illinois Power Company (Illinois Power) tendered for filing firm transmission agreements under which Granite City Steel, Division of National Steel Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25553 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4351–000]

Illinois Power Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Illinois Power Company tendered for filing firm transmission agreements under which Illinois State University will take transmission service pursuant to its open access transmission tariff. The agreements are base on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1997.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25557 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2984–000]

MidAmerican Energy Company; Notice of Filing

September 22, 1997.

Take notice that on August 26, 1997, MidAmerican Energy Company (MidAmerican) tendered for filing an amendment to its initial filing in this proceeding consisting of a First Amendment to the Network Integration Transmission Service Agreement entered into by MidAmerican and the City of Sergeant Bluff, Iowa. The purpose of the First Amendment is to revise certain rates set forth in the Agreement and to add loss factors associated with service to the customer.

MidAmerican proposes an effective date of July 1, 1997, for the First Amendment and, accordingly, has requested a waiver of the Commission's 60-day notice requirement.

Copies of the filing were served on the City of Sergeant Bluff, Iowa.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25543 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–164–001]

Minnesota Power & Light Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Minnesota Power & Light Company tendered for filing an index of all customers served under its open access transmission tariff as required by the Commission in its Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, 80 FERC ¶ 61,143 (1997).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25562 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4501–000]

New York State Electric & Gas Corporation; Notice of Filing

September 22, 1997.

Take notice that the New York State Electric & Gas Corporation (NYSEG) on August 19, 1997, tendered for filing an amendment (Amendment) to a power purchase agreement under NYSEG will provide capacity and/or energy to the Power Authority of the State of New York (NYPA). The power purchase agreement was filed on September 17, 1984 and was subsequently assigned Rate Schedule Number 88, with an effective date of December 1, 1983. The parties agree to revise Article 6 of the power purchase agreement to read that bills shall be rendered on or before the fifteenth day of the next succeeding month and the payment due date shall be either: (a) Ten days after NYPA's receipt of the bill, or (b) the first banking day following the nineteenth of the month, whichever date of later. The Amendment, which is comprised of a revised Article 6 of the power purchase agreement, effects that revision.

NYSEG continues to request an effective date of December 1, 1983, for the power purchase agreement. NYSEG served copies of the filing upon NYPA and the New York State Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25558 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–708–000]

Orange and Rockland Utilities, Inc.; Notice of Filing

September 22, 1997.

Take notice that on July 25, 1997, Orange and Rockland Utilities, Inc., acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, filed a revised Open Access Transmission Service Tariff which incorporates the changes to the Pro Forma Open Access Transmission Tariff set forth in Order No. 888–A.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25565 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3553–000 and ER97–3556–000]

Rochester Gas & Electric Corporation and ROXDEL; Notice of Issuance of Order

September 23, 1997.

ROXDEL (ROXDEL), a power marketer, is a wholly-owned subsidiary of Rochester Gas & Electric Company. ROXDEL filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, ROXDEL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ROXDEL. On September 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 12, 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 ROXDEL 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, ROXDEL is hereby authorized to issue securities and assume obligations and 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 ROXDEL, 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 ROXDEL's 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 14, 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. 97–25615 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–116–001]

Tampa Electric Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Tampa Electric Company (Tampa Electric), submitted a filing in compliance with the Commission's Order On Compliance Tariff Rates and Generic Clarification of Implementation Procedures, issued in Allegheny Power Systems, Inc., Docket No. OA96–18–000, *et al.*, on July 31, 1997.

The compliance filing includes revised tariff sheets for Tampa Electric's open access transmission tariff under order No. 888, an index of transmission customers under Tampa Electric's prior and existing transmission tariffs, and a form of service agreement between Tampa Electric as transmission provider and Tampa Electric in its wholesale merchant function.

Copies of the compliance filing have been served on the persons designated on the official service list in Docket No. OA96–116–000, all of the customers under Tampa Electric's open access tariff, and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 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 September 30, 1997, Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25560 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–749–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 22, 1997.

Take notice that on September 11, 1997, Texas Gas Transmission Corporation (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP97–749–000 a request pursuant to §§ 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to replace, relocate, and consolidate three existing delivery points in Hart County, Kentucky. Texas Gas avers that such proposal would upgrade the existing measurement facilities, and relocate the meters to a site which is more convenient for the operation and maintenance of the station. Texas Gas makes such request under its blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Texas Gas proposes to replace, relocate and consolidate its existing Rowletts, Woodsonville and Munfordville delivery points which are used to serve Western Kentucky Gas Company (WKG), a local distribution company. Texas Gas then proposes to replace those three delivery points with a new consolidated delivery point that will be know as the River Oaks delivery meter station. Texas Gas states that since this proposal is merely a relocation and consolidation of existing meter stations into one new station, service to the customers of WKG will not be affected by this abandonment. It is further stated that since no increase in contract quantity has been requested by WKG, this proposal will not have a significant effect on Texas Gas' peak day and annual deliveries.

Texas Gas estimates the cost of these replacements and relocations to be approximately $81,000.

Any person or the Commission's staff may, within 45 days after issuance of the instate notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25536 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4237–000]

Tucson Electric Power Company; Notice of Filing

September 22, 1997.

Take notice that Tucson Electric Power Company (TED) on August 15, 1997, tendered for filing proposed changes in its FERC Electric Service Tariff. By this filing, TEP is incorporating into its tariff settlement rates and charges applicable to transmission services utilizing TEP's 69kV—138kV Transmission facilities.

Copies of this filing were served upon TEP's jurisdictional customers, the Arizona Public Service Commission, and on all parties of record that actively participated in TEP's open access proceeding.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25552 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–171–001]

The United Illuminating Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, The United Illuminating Company (UI) tendered for filing proposed changes to, and clarifications regarding, its Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4 (Tariff), to comply with the Commission's order in *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 (1997).

UI served a copy of this filing upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–171–000, upon the current customers under the Tariff, and upon the Connecticut Department of Public Utility Control and McCallum Enterprises I Limited Partnership.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25563 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4082–000]

The Washington Water Power Company; Notice of Filing

September 22, 1997.

Take notice that on September 11, 1997, The Washington Water Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25549 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4302–000]

Washington Water Power Company; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Washington Water Power Company (WWP) tendered for filing executed Service Agreements for Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8. WWP requests the Service Agreements be given effective dates of July 23, 1997 and July 31, 1997.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25554 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2424–001]

Western Resources, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 18, 1997, Western Resources, Inc., tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–25540 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–756–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

September 22, 1997.

Take notice that on September 15, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP97–756–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate new metering and associated appurtenant facilities for use in providing delivery of transportation service gas to Bear Paw Energy, Inc. (Bear Paw), authorize in blanket certificate issued in Docket No. CP82–487–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to add a new metering station and associated appurtenant facilities in Richland County, Montana to provide delivery of transportation service gas to Bear Paw. Williston states that bear Paw has requested installation of this metering facility which would allow Williston Basin to make deliveries of up to 535 Mcf per day. The natural gas transportation deliveries to Bear Paw would be used to fuel a field compressor and provide service to an existing tank battery. The estimated cost of the proposed metering facility is $3,700 which would be reimbursable by Bear Paw.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25537 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3656–000]

Wisconsin Public Service Corporation; Notice of Filing

September 22, 1997.

Take notice that on August 20, 1997, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25545 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4408–000, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

September 19, 1997.

Take notice that the following filings have been made with the Commission:

1. The Detroit Edison Company

[Docket No. ER97–4408–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Northeast Utilities Service, Inc., dated as of August 14, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 14, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Detroit Edison Company

[Docket No. ER97–4409–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and Northeast Utilities Service Company, dated as of August 18, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 18, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. The Detroit Edison Company

[Docket No. ER97–4410–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and Stand Energy Corporation, dated as of July 15, 1997. The parties commenced transactions under the Service Agreement on July 15, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 15, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No. ER97–4411–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Stand Energy Corporation, dated as of July 15, 1997. The parties commenced transactions under the Service Agreement on July 15, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 15, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER97–4412–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Southern Energy Trading and Marketing, Inc., dated as of August 19, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 19, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER97–4413–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and Enron Power Marketing, Inc., under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of August 11, 1997. Detroit Edison requests that the Service Agreements be made effective as of August 11, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Texas-New Mexico Power Company

[Docket No. ER97–4414–000]

Take notice that on August 29, 1997, Texas-New Mexico Power Company (TNMP), tendered for filing a Service Agreement for Network Integration Transmission Service provided by TNMP's transmission function for TNMP's merchant function.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The United Illuminating Company

[Docket No. ER97–4415–000]

Take notice that on August 29, 1997, The United Illuminating Company (UI), tendered for filing a Service Agreement, dated August 13, 1997, between UI and Williams Energy Services Company (WESCO) for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 4, as amended.

UI requests an effective date of August 13, 1997, for the Service Agreement. UI served a copy of the filing upon WESCO and upon the Connecticut Department of Public Utility Control.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. The United Illuminating Company

[Docket No. ER97–4416–000]

Take notice that on August 29, 1997, The United Illuminating Company (UI), tendered for filing a Service Agreement, dated August 7, 1997, between UI and NP Energy Inc. (NP Energy) for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 4, as amended.

UI requests an effective date of August 7, 1997, for the Service Agreement. UI served a copy of the filing upon NP Energy and upon the Connecticut Department of Public Utility Control.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Bangor Hydro-Electric Company

[Docket No. ER97–4417–000]

Take notice that on August 29, 1997, Bangor Hydro-Electric Company (Bangor), tendered for filing service agreements under its open access transmission tariff. These service agreements provide for Bangor's merchant functions to take non-firm point-to-point transmission service and firm point-to-point transmission service under Bangor's open access transmission tariff.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Louisiana Electric Co., Inc.

[Docket No. ER97–4418–000]

Take notice that on August 29, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to ConAgra Energy Services under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on ConAgra Energy Services.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc. (on behalf of Georgia Power Co.)

[Docket No. ER97–4419–000]

Take notice that on August 29, 1997, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company, tendered for filing a Purchase Power Agreement between Georgia Power Company and the Municipal Electric Authority of Georgia, effective August 1, 1997. SCS states that it is filing the Purchase Power Agreement as a separate service agreement under SCS' currently effective Power Sales Tariff.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER97–4420–000]

Take notice that on August 29, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Allegheny Power under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Allegheny Power.

NUSCO requests that the Service Agreement become effective August 27, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER97–4421–000]

Take notice that on August 29, 1997, the New England Power Pool (NEPOOL) Executive Committee submitted materials related to its filing on December 31, 1996 in the captioned dockets. These materials extend by two months a Standstill Agreement concerning the use of the transmission interconnections with New York and New Brunswick.

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service list in Docket Nos. OA97–237–000 and ER97–1079–000, the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER97–4423–000]

Take notice that on August 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Western Resources, Inc. (WR).

Cinergy and WR are requesting an effective date of July 29, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER97–4424–000]

Take notice that on August 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and ProMark Energy, Inc. (ProMark).

Cinergy and ProMark are requesting an effective date of August 11, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER97–4425–000]

Take notice that on August 29, 1997, UtiliCorp United Inc., tendered for filing with the Commission forms of service agreements for the transmission provider's own uses of the system under the open access transmission tariffs of UtiliCorp's Missouri Public Service Company, WestPlains Energy-Colorado, and WestPlains Energy-Kansas operating divisions.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–4426–000]

Take notice that on August 29, 1997, Ohio Edison Company and Pennsylvania Power Company (together, Ohio Edison), tendered for filing revisions to the rates, terms and conditions of Ohio Edison's Power Sales Tariff (Tariff) filed on November 29, 1996 (as supplemented on January 31, 1997) in Docket No. ER97–664–000 and designated as OE Operating Companies FERC Electric Tariff Original Volume No. 2.

Ohio Edison states that a copy of the filing has been served on the public utility commissions of Ohio and Pennsylvania, current customers under the Tariff, and participants in Docket No. ER97–664–000.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER97–4429–000]

Take notice that on September 2, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an unexecuted Form of Network Transmission Service Agreement for serving its wholesale requirements customers. This filing is in compliance with the Commission's July 31, 1997, order in *Allegheny Power Systems, Inc., et al.*

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER97–4430–000]

Take notice that on August 29, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing a form of service agreement reflecting the use of the Company's transmission system to serve its wholesale requirements customers pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of July 9, 1996, the effective date of Delmarva's Order No. 888 tariff.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket No. ER97–4431–000]

Take notice that on September 2, 1997, Southern California Edison Company (Edison), tendered for filing Amendment No. 1 (Amendment No. 1) to the Coordination Agreement (Agreement) between Edison and the State of California, Department of Water Resources (CDWR), and a Notice of Cancellation of FERC Rate Schedule No. 170 and all supplements thereto.

Edison requests that this cancellation become effective August 31, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. American Electric Power Service Corporation

[Docket No. ER97–4432–000]

Take notice that on September 2, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective

for service billed on and after August 1, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Additional Signatory to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–4433–000]

Take notice that on September 2, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, a membership application of Constellation Power Source, Inc. PJM requests an effective date of August 30, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Clean Air Capital Markets Corporation

[Docket No. ER97–4434–000]

Take notice that on September 2, 1997, Clean Air Capital Markets Corporation (CACM) petitioned the Commission for acceptance of CACM Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

CACM intends to engage in wholesale electric power and energy purchases and sales as a marketer. CACM is not in the business of generating or transmitting electric power.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Idaho County Light & Power Cooperative Association, Inc.

[Docket No. ER97–4435–000]

Take notice that on September 2, 1997, Idaho County Light & Power Cooperative Association Inc.(Idaho County), submitted for filing a Revised Agreement for Transmission and Power Supply Services to David Cereghino, as amended pursuant to § 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and 35.12 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12. Idaho County's filing is available for public inspection at its offices in Lucile, Idaho.

Idaho County requests that the Commission accept the Revised Service Agreement with an effective date of October 7, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. The Detroit Edison Company

[Docket No. ER97–4436–000]

Take notice that on September 2, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Network Integration Transmission Service (the Service Agreement) between Detroit Edison Transmission Operations and Thumb Electric Cooperative under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of November 1, 1997. Detroit Edison requests that the Service Agreement be made effective as of November 1, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company

[Docket No. ES97–48–000]

Take notice that on September 15, 1997, Duquesne Light Company filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, to issue not more than $600,000,000 of promissory notes and commercial paper and other evidences of indebtedness from time to time with a final maturity date of not later than October 31, 2000.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Public Service Corporation

[Docket No. ER97–4428–000]

Take notice that on Setpember 2, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Southern Energy Trading and Market. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25618 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Open Access Transmission Service Tariff

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed tariff.

SUMMARY: The Western Area Power Administration (Western) is proposing to adopt this Open Access Transmission Service Tariff (Tariff) in order to be consistent with the Federal Energy Regulatory Commission (FERC) Orders 888 and 888–A to the extent practicable and consistent with laws applicable to Western's activities.

DATES: The comment period on the proposed Tariff will begin with the publication of this notice in the **Federal Register** and will end October 27, 1997. To be assured of consideration, all written comments must be received by the end of the comment period. Western will hold a combined public information and public comment forum on the proposed Tariff beginning at 1 p.m., October 7, 1997.

ADDRESSES: The combined public information and public comment forum will be held at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado.

All written comments regarding this proposed Tariff should be directed to the following address: Mr. Robert C. Fullerton, A0600, Corporate Communications, Western Area Power Administration, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401–0098, Electronic Mail: tariff@wapa.gov Facsimile: (303) 275–1290.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert J. Harris, Power Marketing Manager, Upper Great Plains Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394

Mr. Dave Sabo, CRSP Manager, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493
Mr. Anthony H. Montoya, Power Marketing Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2789
Mr. James D. Keselburg, Power Marketing Manager, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7370
Ms. Zola Jackson, Power Marketing Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421.

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I. Procedures
II. Background
III. Issues Raised During the Development of this Proposed Tariff
IV. Summary of Changes from the FERC Pro Forma Tariff
V. Coordination with Adoption of Open Access Transmission Rates

I. Procedures

After all public comments have been considered, Western will prepare a final Tariff and publish it in the **Federal Register**. Western will submit the final Tariff to FERC under a nonjurisdictional docket and will request a declaratory order that the Tariff meets FERC comparability standards as set forth in FERC Orders 888 and 888–A. Western will make necessary changes in response to the FERC declaratory order and further comments and will then publish the revised final Tariff in the **Federal Register**.

II. Background

Western was established pursuant to Section 302 of the Department of Energy (DOE) Organization Act, Public Law 95–91, dated August 4, 1977. Western is generally a partial requirements power supplier that markets and transmits Federal electric power in 15 central and western States encompassing a geographic area of 3.38 million-square-kilometers (1.3 million-square-miles). Western has four Regional Offices and one Customer Service Center which market and transmit power generated by various Federal projects. Nothing in the proposed Tariff is intended to alter, amend, or abridge the statutory obligations of Western to market Federal power and to repay the Federal investment in those Federal projects.

FERC issued a Notice of Proposed Rulemaking (NOPR) for Open Access Transmission Service, published at 60 FR 17662, on April 7, 1995. On October 4, 1995, the Secretary of the Department of Energy (DOE) adopted a Power Marketing Administration Open Access Transmission Policy which stated that DOE supported the spirit and intent of the NOPR and directed the Power Marketing Administrations to prepare tariffs which would conform to the principles set forth in the FERC's final rule. FERC issued its final rule, Order 888, published at 61 FR 21540 on May 10, 1996, and followed with Order 888–A, published at 62 FR 12273, on March 14, 1997.

In early 1996, Western began developing a Tariff Equivalent Package (TEP) to comply with the Secretary's directive. A draft TEP, which was designed as a Western-wide document that would contain Region-specific rates and charges, was completed in July 1996 and sent to Western's electric service customers, transmission-service customers, and other interested parties for review and comment. Western accepted comments through November 1996.

After evaluating comments, Western modified its original concept of preparing a Western-wide TEP and began developing Regional Open Access Transmission Service Guidelines (Regional Guidelines). These Regional Guidelines contained service agreements consistent with the specific conditions applicable to each Region. The resulting documents were sent to electric service customers, transmission customers, and other interested parties for review and comment in April 1997. The review period for those documents ended in early June 1997. To date, customer and interested party participation has been conducted informally.

Western will submit a single Tariff document to FERC under a nonjurisdictional docket and request a declaratory order from FERC that the Tariff meets the FERC comparability standards as set forth in FERC Orders 888 and 888–A. Consistent with a single FERC filing, Western decided to develop and file this single Tariff with appended schedules and attachments. Western's Tariff includes Attachment J, Provisions Specific to the Transmission Provider, and Attachment K, Authorities and Obligations, which are specific to Western and are not found in FERC Order 888–A, Exhibit B, Pro Forma Tariff.

III. Issues Raised During the Development of This Proposed Tariff

Participants in the informal review process raised numerous issues about both versions of the draft documents. The following discussion highlights the more significant issues and Western's responses as incorporated into this proposed Tariff.

A. *Issue:* There is concern that some of Western's Regional Offices may not offer Network Integration Transmission Service, hereafter called network service, at this time. Some think that not providing network service would probably mean that the Tariff would be of little value to all existing transmission customers. They think this would raise significant comparability issues since the service Western provides itself is network service.

Response: In most cases, the service Western provides to its firm power customers is not exactly network or point-to-point service. Western will offer network service subject to available transfer capability determined considering operating constraints, facility limitations, and existing contractual obligations.

B. *Issue:* Some of Western's customers have expressed concern that the combination of the network service provisions and the definitions provided in Western's Tariff result in transmission being paid for both as part of Western's power rates and again under Western's Tariff. The Tariff does not clearly describe how this would be eliminated. A Western customer's load and/or resources should be reduced to account for Western's power contract commitment to the customer. Similarly, the definition of Network Customer should include the possibility that a Network Customer may also be a Federal customer as defined in Attachment K.

Response: FERC recognized that existing power and transmission arrangements represent a transitional problem as customers begin to take service under the Pro Forma Tariff. FERC did not intend, nor does Western, for a transmission provider to receive two payments for providing service to the same portion of a transmission customer's load. The current definition of Network Customer does not exclude the possibility that a Network Customer may also be a Federal customer.

C. *Issue:* Some of Western's customers encouraged Western to reserve its transmission capability to serve future load growth needs of its customers, including direct-service customers. Some of Western's firm power customers also requested that Western

identify its allocations to customers as Native Load in the Tariff.

Response: Western's customers with point-to-point transmission service may request increased reservations of point-to-point transmission to accommodate specified amounts of anticipated load growth of the customer. Where Western is able to provide network service, Western intends to meet anticipated load growth; however, Western's ability to construct additional transmission facilities to accommodate Network Customer load growth may be limited by appropriations or advance customer funding. Western will adhere to the transmission procedures set forth in its final Tariff for all requests for transmission service. Western has defined firm power and project use customers as Federal customers in Attachment K to the Tariff and will treat them in a manner analogous to the treatment of Native Load Customers of public utilities.

D. *Issue:* Why does Western require advancement of funds?

Response: Under present legislation, Western cannot use appropriated funds to do work for others and is prohibited from entering into contracts that obligate it to spend funds it does not have.

E. *Issue:* Western should be proposing service only over Federal facilities. Western should not allow stranded cost recovery for non-Federal facilities.

Response: Each Western Regional Office will design rates to include the facilities used to provide transmission service under the Tariff. The transmission system description may be modified in the Tariff to correspond with results of some rate making processes. The terms of the Tariff will allow stranded cost recovery when appropriate and consistent with applicable Federal law.

F. *Issue:* Why cannot Western provide service without a contract?

Response: Western believes that the Pro Forma language, as modified in Western's Tariff, provides adequate protection and is willing to provide service without an executed Service Agreement in accordance with the terms of sections 1.45, 15.3 and 29.1. These sections require the Transmission customer to agree to abide by the Tariff terms and the existing transmission rates. The Transmission Customer may also request resolution under the provisions of Section 12, Dispute Resolution, of the Tariff.

G. *Issue:* What process will Western use for future changes to the Tariff?

Response: Western is providing notice of this proposal and an opportunity to comment. The proposal may then be modified after considering the comments received. Western will submit the final Tariff to FERC under a nonjurisdictional docket and request a declaratory order from FERC that the final Tariff meets FERC comparability standards as set forth in FERC Orders 888 and 888–A. Interested parties will have an opportunity to comment on the Tariff by following appropriate procedures to intervene with FERC. Western will make necessary changes in response to the FERC declaratory order and further comments and will then publish the final revised Tariff in the **Federal Register**.

H. *Issue:* Some of Western's customers believe that Western has a statutory obligation to deliver power to its firm power customers and therefore, should not they have a superior right? How will Western address ''comparability'' issues?

Response: Service to be provided under the Tariff will not conflict with any of Western's statutory obligations. There will be no need to give Western's Federal customers a superior right to transmission since adequate capacity will be reserved for the long-term delivery of the Federal power through Western's process in determining its Available Transfer Capability (ATC), which requires consideration of various hydrological conditions and also considers the possible integration of thermal or other generation sources. If there is additional capacity above Western's needs for use by others, Western will make that capacity available under the Tariff. This will ensure adequate long-term transmission capacity for Federal purposes as well as allowing Western the ability to provide comparable service to others.

I. *Issue:* Does Western intend that an entity seeking transmission service across the entire Western system would need to have a service agreement with each Western Regional Office and pay individual rates for use of each office's system, leading to a pancaking of rates?

Response: More than one service agreement may be needed if an entity wants service across the transmission facilities of more than one project. Although a Regional Office may have responsibility for more than one Project Transmission System, each Project has its own separate transmission system and its own repayment obligation for that specific system.

IV. Summary of Changes From the FERC Pro Forma Tariff

Western's proposed Tariff has 11 differences from the Pro Forma Tariff that can be grouped into four major categories: Preservation of Obligations, FERC Jurisdictional Issues, Financial Considerations, and Legal Issues.

A. Preservation of Obligations

i. Transmission Provider and Transmission System

Western operates, manages, and has repayment responsibilities for several independent transmission systems. Each system is managed as an independent financial entity with discrete repayment responsibilities under Federal statutes authorizing the individual transmission systems. A Service Agreement for use of one system's facilities and payment of one system's rate may not permit a transmission customer to use the facilities of another system. There is no single Western-wide transmission system or transmission rate. Each system is described in Attachment K (Authorities and Obligations) to the proposed Tariff. The definitions of Transmission Provider in Section 1.46 and Transmission System in Section 1.49 are modified to recognize the independent nature of the transmission facilities.

ii. Losses

Sections 15.7 and 28.5 of the Pro Forma Tariff are modified to allow the applicable transmission losses percentages to be included in the Region-specific Service Agreements. Western's Regional Offices frequently modify transmission loss factors based on actual system losses. Including losses in the Service Agreement provides a more efficient means of modifying losses than modifying the Tariff. Additionally, since Western has developed a Western-wide Tariff applicable to all Regional Offices, including losses in the Service Agreements is more appropriate.

iii. Federal Customers

Western markets generation to customers that are entitled by law to receive preference in the sale of Federal power, as opposed to jurisdictional public utilities that serve load requirements in a geographical area. Western will treat preference customers in a manner analogous to Native Load Customers of public utilities as defined in the Pro Forma Tariff. Attachment K defines these Federal Customers.

iv. Ancillary Services

Section 3 of the proposed Tariff is modified to include the option for Western to purchase Ancillary Services and pass through such costs to the Transmission Customer. Western's hydroelectric power facilities have limited capability to provide some Ancillary Services, due to variable

hydrological conditions and environmental and operational constraints. The existing long-term hydrological capability is allocated and under contract to Federal Customers in accordance with the preference provisions of Federal law.

B. FERC Jurisdictional Issues

Since Western is not a jurisdictional public utility, the Tariff does not include reference to FERC approval of rates or service agreements. Western does not file its rates or contracts under Section 205 and Section 206 of the Federal Power Act. Western's rates are developed pursuant to Federal law, under public information and comment procedures, that specify FERC's role in reviewing Power Marketing Administration rates. Appropriate modifications reflecting Western's rate setting process were made to Sections 1.10, 2.2, 9, 12.1, 13.3, 14.3, 20.3, 26, 27, 34, 34.5.

Western does not file executed service agreements with FERC or seek FERC approval to terminate service. Appropriate modifications are made to Sections 1.45, 7.3, 13.4, 14.4, 15.3, 17.6, 19.3, 19.4, 29.1, 29.5, 32.3, and 32.4 to reflect Western's status as a nonjurisdictional utility.

C. Financial Considerations

i. Deposits for Transmission Service and Interest

Western's current financial system and procedures make collecting and refunding deposits unduly burdensome. Western has replaced provisions for collecting deposits with Completed Applications and returning such deposits with interest under certain circumstances with language that allows Western to assess a nondiscriminatory, non-refundable application processing fee for all Transmission Service requests. The processing fee reflects an average of staff wages and benefits multiplied by the average time it takes to analyze and respond to requests for service. FERC has found in other nonjurisdictional tariffs that such an approach represents an administratively simple alternative to the Pro Forma language. Also, Western will not pay interest on deposits for studies or construction. Although Western may, by contract, pay interest, Western cannot earn interest on funds deposited into the U.S. Treasury. Western has also investigated escrow accounts at commercial financial institutions and found that administrative costs generally exceeded interest payments. Paying interest on deposits would result in other ratepayers funding this expense. Western does not believe this is an equitable method and will not pay interest. Appropriate modifications are made to Sections 1.5, 17.3, 17.4, 17.6, 19.1, 19.4, 20.3, 22.2, 29.2, 32.1, 32.2, and 32.4.

ii. Advance Payment

There are several sections in the Pro Forma Tariff that require the Transmission Provider to perform activities with reimbursement by the Transmission Customer. Except for certain activities with other Federal agencies, Western normally requires advance of funds to perform work rather than receiving a reimbursement. Western is funded through Congressional appropriations. The Anti-Deficiency Act and other appropriations laws generally prohibit Federal agencies from expending funds without having adequate funds in the Treasury and from expending appropriations for purposes other than those for which Congress appropriated the funds. Modifications are made to Sections 13.5, 15.4, 19.1, 19.2, 19.4, 19.8, 20.3, 23.2, 28.2, 31.5, 32.1, and 32.4.

iii. Net Billing and Bill Crediting

Western's proposed Tariff uses the Pro Forma Tariff language in Section 7 (Billing and Payment). In addition, two provisions in Attachment J provide for Net Billing and Bill Crediting. Net Billing and Bill Crediting are two alternative financing mechanisms that Western has a long-standing history of using. The Net Billing language provides that charges for generation will not be offset with transmission charges without mutual agreement. To be as consistent as possible with the Pro Forma Tariff language, Western included these Western-specific provisions in Attachment J.

D. Legal Issues

Western has adopted the Force Majeure language of the Pro Forma Tariff. Western has added language assuring that both parties to a contract will provide each other with written notice of any Force Majeure and exercise due diligence in resolving the problem. Western used the Pro Forma Tariff language for Indemnification with the addition of a sentence to reflect the fact that Western's liability is limited under Federal law and is determined in accordance with the Federal Tort Claims Act. Appropriate modifications are made to Section 10.

i. Dispute Resolution

Western modified the dispute resolution provisions to recognize the limits to Western's statutory and regulatory authority to submit disputes to arbitration consistent with the Administrative Dispute Resolution Act. Appropriate modifications are made to Section 12.

ii. Western-Specific Provisions

In Attachment J to the Tariff, Western incorporated several provisions specific to Western, as a Federal agency. Section 1, Change of Rates, provides for Western to change rates under the Schedules in accordance with appropriate rate adjustment procedures and other applicable Federal laws. This provision also provides an option for transmission customers to terminate service within 90 days after the effective date of a rate change. This language is necessary because Western does not file its rate adjustments with FERC under the Federal Power Act like jurisdictional public utilities. FERC's review of Western's rates is provided under a different body of Federal law.

Section 2, Contingent Upon Appropriations, is required by Federal law to be included in Federal contracts that will extend beyond the current fiscal year. Section 3, Covenant Against Contingent Fees; Section 4, Contract Work Hours and Safety Standards; Section 5, Equal Opportunity Employment Practices; and Section 6, Use of Convict Labor, are contract sections that are required by Federal law to be included in all Federal contracts.

Section 7, Independent System Operator (ISO), recognizes that Western is involved with the development of several independent system operator (ISO) organizations and that the final Tariff may need modifications as a result of a Western Regional Office joining an ISO.

Section 8 provides that the final Tariff does not grant any rights to any Third Parties who are not a party to the Service Agreement. Section 9, Entire Agreement, provides that the Service Agreement and Tariff are the entire understanding between Western and the Transmission Customer. Section 10, Power Supply Obligations, provides that Western is not obligated to supply capacity and energy from Federal generation sources during Interruptions or Curtailments other than through the provisions of Operating Reserve Service and emergency power. Generally, Federal generation is completely allocated and under contract on a long-term basis to customers entitled to preference under Federal law and may not be available for support of Transmission Service.

Section 11, Federal Law, provides that the performance under the Tariff and Service Agreement shall be governed by

applicable Federal law. This avoids disputes concerning state law and Federal sovereignty. There may be other sections of the Tariff where there may be potential conflicts between laws under which Western must operate and FERC policy, such as Sections 27 and 31.2. Section 12, Continuing Obligations, provides that obligations to make payments survive termination of the Service Agreement until satisfied. Section 13, Net Billing, and Section 14, Bill Crediting, are discussed above.

V. Coordination With Adoption of Open Access Transmission Rates

Each of Western's Regional Offices is at a different point in the process of developing Open Access Transmission Rates. DOE approval of Western's rates is addressed in DOE Delegation Order No. 0204–108. Western's procedures for public involvement for rate procedures are covered in 10 CFR Part 903. Filing requirements and procedures for FERC review of Power Marketing Administration rates are detailed in 18 CFR Part 300. Until the Regional Offices complete the processes of placing long-term rates in effect for the services to be provided under the open-access tariff, they will use existing long-term rates when applicable. Short-term rates may be placed in effect by Western's Administrator and used when no rates exist for such services. Once the long-term rates are in effect, they will supersede the short-term rates.

The Sierra Nevada Region's (SNR) new rates for ancillary services and transmission are proposed to become effective October 1, 1997, and to be effective for a 5-year period ending September 30, 2002. The proposed rate adjustment was initiated on May 5, 1996, and four informal customer workshops were held. A **Federal Register** notice was published on March 4, 1997 (62 FR 9763), officially announcing the proposed rates, initiating the public consultation and comment period, and announcing the public information and public comment forums. The **Federal Register** notice was sent to all Central Valley Project preference customers and interested parties, and a public information and a public comment forum were held.

The Colorado River Storage Project Customer Service Center (CRSP CSC) is currently conducting a public process to develop transmission and ancillary service rates consistent with FERC Orders 888 and 888–A to be used with its Tariff. The public comment period will conclude September 23, 1997. The proposed effective date of the rates will be April 1, 1998.

The Desert Southwest Region will begin a formal public involvement process in September 1997 to develop transmission and ancillary service rates consistent with FERC Orders 888 and 888-A to be used with the Tariff. The proposed effective date of the rates will be April 1, 1998.

The Upper Great Plains Region (UGPR) has implemented short-term Open Access Transmission Rates approved by Western's Administrator. These transmission rates and ancillary service rates became effective December 20, 1996, and will expire December 19, 1997. On March 28, 1997, by the mailing of an Advance Announcement of the transmission rate adjustment for the Pick-Sloan Missouri Basin Program, Eastern Division, a public process was initiated to establish long-term Open Access Transmission Rates for the UGPR. UGPR has received comments from that announcement and published its proposal in September 1997. The proposed effective date is February 1, 1998.

The Rocky Mountain Region (RMR) will begin a formal public involvement process in September 1997 to develop transmission and ancillary service rates consistent with FERC Orders 888 and 888–A to be used with the Tariff. The proposed effective date of the rates will be April 1, 1998.

Subsequent changes to Regional Office Open Access Transmission rates will be completed on a project-by-project basis using the public involvement and FERC review processes outlined above.

Review Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. The Acting Administrator for Western certifies that Western's providing open transmission access would not cause an adverse economic impact on a substantial number of such entities. Since the proposed open-access tariff is of limited applicability, no flexibility analysis is required.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from OMB for the collection of information in this rule under OMB control number 1910–0100.

Review Under the National Environmental Policy Act

Western will comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE NEPA Implementing Procedures (10 CFR Part 1021) prior to adopting the Tariff.

AVAILABILITY OF INFORMATION: A redline/strikeout comparison of Western's proposed Tariff to the FERC Pro Forma will be available from the informational contacts listed previously or on the Internet at http://www.wapa.gov.

Dated: September 17, 1997.

Michael S. Hacskaylo,

Acting Administrator.

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I. Common Service Provisions

1 Definitions

1.1 Ancillary Services: Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

1.2 Annual Transmission Costs: The total annual cost of the Transmission System for purposes of Network Integration Transmission Service shall be the amount specified in Attachment H until amended by the Transmission Provider or modified by the Commission, pursuant to Federal Law.

1.3 Application: A request by an Eligible Customer for transmission service pursuant to the provisions of the Tariff.

1.4 Commission: The Federal Energy Regulatory Commission.

1.5 Completed Application: An Application that satisfies all of the information and other requirements of the Tariff, including any required application processing fee.

1.6 Control Area: An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(1) Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(2) Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

(3) Maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and

(4) Provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

1.7 Curtailment: A reduction in firm or non-firm transmission service in response to a transmission capacity shortage as a result of system reliability conditions.

1.8 Delivering Party: The entity supplying capacity and energy to be transmitted at Point(s) of Receipt.

1.9 Designated Agent: Any entity that performs actions or functions on behalf of the Transmission Provider, an Eligible Customer, or the Transmission Customer required under the Tariff.

1.10 Direct Assignment Facilities: Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer.

1.11 Eligible Customer: (i) Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by Section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider.

(ii) Any retail customer taking unbundled transmission service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider, is an Eligible Customer under the Tariff.

1.12 Facilities Study: An engineering study conducted by the Transmission Provider to determine the required modifications to the Transmission Provider's Transmission System, including the cost and scheduled completion date for such modifications, that will be required to provide the requested transmission service.

1.13 Firm Point-To-Point Transmission Service: Transmission Service under this Tariff that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of this Tariff.

1.14 Good Utility Practice: Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

1.15 Interruption: A reduction in non-firm transmission service due to economic reasons pursuant to Section 14.7.

1.16 Load Ratio Share: Ratio of a Transmission Customer's Network Load to the Transmission Provider's total load computed in accordance with Sections 34.2 and 34.3 of the Network Integration Transmission Service under Part III of the Tariff and calculated on a rolling twelve month basis.

1.17 Load Shedding: The systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations under Part III of the Tariff.

1.18 Long-Term Firm Point-To-Point Transmission Service: Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of one year or more.

1.19 Native Load Customers: The wholesale and retail power customers of the Transmission Provider on whose behalf the Transmission Provider, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate the Transmission Provider's system to meet the reliable electric needs of such customers.

1.20 Network Customer: An entity receiving transmission service pursuant to the terms of the Transmission Provider's Network Integration Transmission Service under Part III of the Tariff.

1.21 Network Integration Transmission Service: The transmission service provided under Part III of the Tariff.

1.22 Network Load: The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where a Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

1.23 Network Operating Agreement: An executed agreement that contains the terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service under Part III of the Tariff.

1.24 Network Operating Committee: A group made up of representatives from the Network Customer(s) and the Transmission Provider established to coordinate operating criteria and other technical considerations required for implementation of Network Integration Transmission Service under Part III of this Tariff.

1.25 Network Resource: Any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

1.26 Network Upgrades: Modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System.

1.27 Non-Firm Point-To-Point Transmission Service: Point-To-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to Curtailment or Interruption as set forth in Section 14.7 under Part II of the Tariff. Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

1.28 Open Access Same-Time Information System (OASIS): The information system and standards of conduct contained in Part 37 of the Commission's regulations and all additional requirements implemented by subsequent Commission orders dealing with OASIS.

1.29 Part I: Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.

1.30 Part II: Tariff Sections 13 through 27 pertaining to Point-To-Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.31 Part III: Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.32 Parties: The Transmission Provider and the Transmission Customer receiving service under the Tariff.

1.33 Point(s) of Delivery: Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Transmission Service.

1.34 Point(s) of Receipt: Point(s) of interconnection on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Part II of the Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Transmission Service.

1.35 Point-To-Point Transmission Service: The reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff.

1.36 Power Purchaser: The entity that is purchasing the capacity and energy to be transmitted under the Tariff.

1.37 Receiving Party: The entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.

1.38 Regional Transmission Group (RTG): A voluntary organization of transmission owners, transmission users and other entities approved by the Commission to efficiently coordinate transmission planning (and expansion), operation and use on a regional (and interregional) basis.

1.39 Reserved Capacity: The maximum amount of capacity and energy that the Transmission Provider agrees to transmit for the Transmission Customer over the Transmission Provider's Transmission System between the Point(s) of Receipt and the Point(s) of Delivery under Part II of the Tariff. Reserved Capacity shall be expressed in terms of whole megawatts on a sixty (60) minute interval (commencing on the clock hour) basis.

1.40 Service Agreement: The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and the Transmission Provider for service under the Tariff.

1.41 Service Commencement Date: The date the Transmission Provider begins to provide service pursuant to the terms of an executed Service Agreement, or the date the Transmission Provider begins to provide service in accordance with Section 15.3 or Section 29.1 under the Tariff.

1.42 Short-Term Firm Point-To-Point Transmission Service: Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of less than one year.

1.43 System Impact Study: An assessment by the Transmission Provider of (i) the adequacy of the Transmission System to accommodate a request for either Firm Point-To-Point Transmission Service or Network Integration Transmission Service and (ii) whether any additional costs may be incurred in order to provide transmission service.

1.44 Third-Party Sale: Any sale for resale in interstate commerce to a Power Purchaser that is not designated as part of Network Load under the Network Integration Transmission Service.

1.45 Transmission Customer: Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider provide transmission service without a Service Agreement, pursuant to section 15.3 of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.

1.46 Transmission Provider: The Regional Office of the Western Area Power Administration (Western) which owns, controls, or operates the facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff with which the Transmission Customer has contracted to provide Transmission Service (See Attachment K).

1.47 Transmission Provider's Monthly Transmission System Peak: The maximum firm usage of the Transmission Provider's Transmission System in a calendar month.

1.48 Transmission Service: Point-To-Point Transmission Service provided under Part II of the Tariff on a firm and non-firm basis.

1.49 Transmission System: The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff and are defined in Attachment K to the Tariff.

2 Initial Allocation and Renewal Procedures

2.1 Initial Allocation of Available Transmission Capability: For purposes of determining whether existing capability on the Transmission Provider's Transmission System is adequate to accommodate a request for firm service under this Tariff, all Completed Applications for new firm transmission service received during the initial sixty (60) day period commencing with the effective date of the Tariff will be deemed to have been filed simultaneously. A lottery system conducted by an independent party shall be used to assign priorities for Completed Applications filed simultaneously. All Completed Applications for firm transmission service received after the initial sixty (60) day period shall be assigned a priority pursuant to Section 13.2.

2.2 Reservation Priority For Existing Firm Service Customers: Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current rate for such service. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of one-year or longer.

3 Ancillary Services

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation Sources.

The Transmission Provider is required, to the extent possible, to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve—Spinning, and (iv) Operating Reserve—Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area, is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Provider will offer to provide the Transmission Customer Ancillary Services only to the extent surplus Federal generation is available for such services. However, the Transmission Provider may purchase Ancillary Services from others on behalf of the Transmission Customer under the terms of an agreement separate from the Service Agreement. The costs of such purchases on behalf of a Transmission Customer will be passed directly through to that Transmission Customer. The Transmission Customer must list in its Application which Ancillary

Services it will purchase from the Transmission Provider.

If the Transmission Provider is a utility providing transmission service, but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5, and 6) from a third party or by self-supply when technically feasible.

The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods for each are described on the Schedules that are attached to and made a part of the Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 3.1 through 3.6 below list the six Ancillary Services.

3.1 Scheduling, System Control and Dispatch Service: The rates and/or methodology are described in Schedule 1.

3.2 Reactive Supply and Voltage Control from Generation Sources Service: The rates and/or methodology are described in Schedule 2.

3.3 Regulation and Frequency Response Service: Where applicable the rates and/or methodology are described in Schedule 3.

3.4 Energy Imbalance Service: Where applicable the rates and/or methodology are described in Schedule 4.

3.5 Operating Reserve—Spinning Reserve Service: Where applicable the rates and/or methodology are described in Schedule 5.

3.6 Operating Reserve—Supplemental Reserve Service: Where applicable the rates and/or methodology are described in Schedule 6.

4 Open Access Same-Time Information System (OASIS)

Terms and conditions regarding Open Access Same-Time Information System and standards of conduct are set forth in 18 CFR 37 of the Commission's regulations (Open Access Same-Time Information System and Standards of Conduct for Public Utilities). In the event available transmission capability as posted on the OASIS is insufficient to accommodate a request for firm transmission service, additional studies may be required as provided by this Tariff pursuant to Sections 19 and 32.

5 Local Furnishing Bonds

5.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds: This provision is applicable only to Transmission Providers that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code (''local furnishing bonds''). Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance the Transmission Provider's facilities that would be used in providing such transmission service.

5.2 Alternative Procedures for Requesting Transmission Service:

(i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such transmission service, it shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.

(ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider, within ten (10) days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act. The Commission, upon receipt of the Transmission Provider's waiver of its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service in accordance with the terms and conditions of this Tariff.

6 Reciprocity

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates. A Transmission Customer that is a member of a power pool or Regional Transmission Group also agrees to provide comparable transmission service to the members of such power pool and Regional Transmission Group on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates.

This reciprocity requirement applies not only to the Transmission Customer that obtains transmission service under the Tariff, but also to all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer. This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include

in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision.

7 Billing and Payment

7.1 Billing Procedures: Within a reasonable time after the first day of each month, the Transmission Provider shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the Transmission Provider, or by wire transfer to a bank named by the Transmission Provider.

7.2 Interest on Unpaid Balances: Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 CFR 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the Transmission Provider.

7.3 Customer Default: In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Within the same 30 calendar days after notice of failure to make payment, the Transmission Customer shall have the right of appeal to the Administrator of Western. The Transmission Provider shall submit its recommendation to the Administrator for review and approval, but shall not terminate service until the Administrator makes a determination on the Transmission Customer's appeal. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

8 Accounting for the Transmission Provider's Use of the Tariff

The Transmission Provider shall record the following amounts, as outlined below.

8.1 Transmission Revenues: Include in a separate operating revenue account or subaccount the revenues it receives from Transmission Service when making Third-Party Sales under Part II of the Tariff.

8.2 Study Costs and Revenues: Include in a separate transmission operating expense account or subaccount, costs properly chargeable to expense that are incurred to perform any System Impact Studies or Facilities Studies which the Transmission Provider conducts to determine if it must construct new transmission facilities or upgrades necessary for its own uses, including making Third-Party Sales under the Tariff; and include in a separate operating revenue account or subaccount the revenues received for System Impact Studies or Facilities Studies performed when such amounts are separately stated and identified in the Transmission Customer's billing under the Tariff.

9 Regulatory Filings

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

10 Force Majeure and Indemnification

10.1 Force Majeure: An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff. Either Party rendered unable to fulfill any of its obligations under the Service Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

10.2 Indemnification: The Transmission Customer shall at all times indemnify, defend, and save the Transmission Provider harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Transmission Provider's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the Transmission Provider. The liability of the Transmission Provider shall be determined in accordance with the provisions of the Federal Tort Claims Act, as amended.

11 Creditworthiness

For the purpose of determining the ability of the Transmission Customer to meet its obligations related to service hereunder, the Transmission Provider may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices.

In addition, the Transmission Provider may require the Transmission Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Tariff, or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices established by the Uniform Commercial Code that protects the Transmission Provider against the risk of non-payment.

12 Dispute Resolution Procedures

12.1 Internal Dispute Resolution Procedures: Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable.

12.2 Disputes: Any dispute regarding service provided under the Service Agreement will be resolved in a manner consistent with the Administrative Dispute Resolution Act, as amended, subject to statutory and regulatory limits on Western's authority to submit disputes to arbitration.

12.3 Rights Under The Federal Power Act: Nothing in this section shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.

Part II. Point-To-Point Transmission Service

Preamble

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service pursuant to the applicable terms and conditions of this Tariff. Point-To-Point Transmission Service is for the receipt of capacity and energy at designated Point(s) of Receipt and the transmission of such capacity and energy to designated Point(s) of Delivery.

13 Nature of Firm Point-To-Point Transmission Service

13.1 Term: The minimum term of Firm Point-To-Point Transmission Service shall be one day and the maximum term shall be specified in the Service Agreement.

13.2 Reservation Priority: Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis *i.e.*, in the chronological sequence in which each Transmission Customer reserved service. Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction. If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines; one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transmission capability is insufficient to satisfy all Applications, an Eligible Customer with a reservation for shorter term service has the right of first refusal to match any longer term reservation before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in Section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff. Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

13.3 Use of Firm Transmission Service by the Transmission Provider: The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under agreements executed on or after November 25, 1997. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of the Point-To-Point Transmission Service to make Third-Party Sales.

13.4 Service Agreements: The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it submits a Completed Application for Long-Term Firm Point-To-Point Transmission Service. The Transmission Provider shall offer a standard form Firm Point-to-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it first submits a Completed Application for Short-Term Firm Point-to-Point Transmission Service pursuant to the Tariff.

13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs: In cases where the Transmission Provider determines that the Transmission System is not capable of providing Firm Point-To-Point Transmission Service without (1) degrading or impairing the reliability of service to Native Load Customers, Network Customers and other Transmission Customers taking Firm Point-To-Point Transmission Service, or (2) interfering with the Transmission Provider's ability to meet prior firm contractual commitments to others, the Transmission Provider will be obligated to expand or upgrade its Transmission System pursuant to the terms of Section 15.4. The Transmission Customer must agree to compensate the Transmission Provider in advance for any necessary transmission facility additions pursuant to the terms of Section 27. To the extent the Transmission Provider can relieve any system constraint more economically by redispatching the Transmission Provider's resources than through constructing Network Upgrades, it shall do so, provided that the Eligible Customer agrees to compensate the Transmission Provider pursuant to the terms of Section 27. Any redispatch, Network Upgrade or Direct Assignment Facilities costs to be charged to the Transmission Customer on an incremental basis under the Tariff will be specified in the Service Agreement or a separate agreement, as appropriate, prior to initiating service.

13.6 Curtailment of Firm Transmission Service: In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. When the Transmission Provider determines that an electrical emergency exists on its Transmission System and

implements emergency procedures to Curtail Firm Transmission Service, the Transmission Customer shall make the required reductions upon request of the Transmission Provider. However, the Transmission Provider reserves the right to Curtail, in whole or in part, any Firm Transmission Service provided under the Tariff when, in the Transmission Provider's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of its Transmission System. The Transmission Provider will notify all affected Transmission Customers in a timely manner of any scheduled Curtailments.

13.7 Classification of Firm Transmission Service:

(a) The Transmission Customer taking Firm Point-To-Point Transmission Service may (1) change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1 or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.2.

(b) The Transmission Customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the Transmission Provider's Transmission System. For such a purchase of transmission service, the resources will be designated as multiple Points of Receipt, unless the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt.

(c) The Transmission Provider shall provide firm deliveries of capacity and energy from the Point(s) of Receipt to the Point(s) of Delivery. Each Point of Receipt at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Receipt. Points of Receipt and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. Each Point of Delivery at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Delivery. Points of Delivery and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. The greater of either (1) the sum of the capacity reservations at the Point(s) of Receipt, or (2) the sum of the capacity reservations at the Point(s) of Delivery shall be the Transmission Customer's Reserved Capacity. The Transmission Customer will be billed for its Reserved Capacity under the terms of Schedule 7. The Transmission Customer may not exceed its firm capacity reserved at each Point of Receipt and each Point of Delivery except as otherwise specified in Section 22. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer, (including Third-Party Sales by the Transmission Provider) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery.

13.8 Scheduling of Firm Point-To-Point Transmission Service: Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 10:00 a.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 10:00 a.m. will be accommodated, if practicable. Hour-to-hour schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Scheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14 Nature of Non-Firm Point-To-Point Transmission Service

14.1 Term: Non-Firm Point-To-Point Transmission Service will be available for periods ranging from one (1) hour to one (1) month. However, a Purchaser of Non-Firm Point-To-Point Transmission Service will be entitled to reserve a sequential term of service (such as a sequential monthly term without having to wait for the initial term to expire before requesting another monthly term) so that the total time period for which the reservation applies is greater than one month, subject to the requirements of Section 18.3.

14.2 Reservation Priority: Non-Firm Point-To-Point Transmission Service shall be available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted. A longer term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) Immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in Section 14.6) for Non-Firm Point-To-

Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Provider: The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under agreements executed on or after November 25, 1997. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of Non-Firm Point-To-Point Transmission Service to make Third-Party Sales.

14.4 Service Agreements: The Transmission Provider shall offer a standard form Non-Firm Point-To-Point Transmission Service Agreement (Attachment D) to an Eligible Customer when it first submits a Completed Application for Non-Firm Point-To-Point Transmission Service pursuant to the Tariff.

14.5 Classification of Non-Firm Point-To-Point Transmission Service: Non-Firm Point-To-Point Transmission Service shall be offered under terms and conditions contained in Part II of the Tariff. The Transmission Provider undertakes no obligation under the Tariff to plan its Transmission System in order to have sufficient capacity for Non-Firm Point-To-Point Transmission Service. Parties requesting Non-Firm Point-To-Point Transmission Service for the transmission of firm power do so with the full realization that such service is subject to availability and to Curtailment or Interruption under the terms of the Tariff. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its non-firm capacity reservation. Non-Firm Point-To-Point Transmission Service shall include transmission of energy on an hourly basis and transmission of scheduled short-term capacity and energy on a daily, weekly or monthly basis, but not to exceed one month's reservation for any one Application under Schedule 8.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service: Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 2:00 p.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 2:00 p.m. will be accommodated, if practicable. Hour-to-hour schedules of energy that are to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.7 Curtailment or Interruption of Service: The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4) transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (e.g., hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

15 Service Availability

15.1 General Conditions: The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service over, on or across its Transmission System to any Transmission Customer that has met the requirements of Section 16.

15.2 Determination of Available Transmission Capability: A description of the Transmission Provider's specific methodology for assessing available transmission capability posted on the Transmission

Provider's OASIS (Section 4) is contained in Attachment C of the Tariff. In the event sufficient transmission capability may not exist to accommodate a service request, the Transmission Provider will respond by performing a System Impact Study.

15.3 Initiating Service in the Absence of an Executed Service Agreement: If the Transmission Provider and the Transmission Customer requesting Firm or Non-Firm Point-To-Point Transmission Service cannot agree on all the terms and conditions of the Point-To-Point Service Agreement, the Transmission Provider shall commence providing Transmission Service subject to the Transmission Customer agreeing to (i) compensate the Transmission Provider at the existing rate placed in effect pursuant to applicable Federal law and regulations , and (ii) comply with the terms and conditions of the Tariff including paying the appropriate processing fees in accordance with the terms of Section 17.3. If the Transmission Customer cannot accept all of the terms and conditions of the offered Service Agreement, the Transmission Customer may request resolution of the unacceptable terms and conditions under Section 12, Dispute Resolution Procedures, of the Tariff. Any changes resulting from the Dispute Resolution Procedures will be effective upon the date of initial service.

15.4 Obligation to Provide Transmission Service that Requires Expansion or Modification of the Transmission System: If the Transmission Provider determines that it cannot accommodate a Completed Application for Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to expand or modify its Transmission System to provide the requested Firm Transmission Service, provided the Transmission Customer agrees to compensate the Transmission Provider in advance for such costs pursuant to the terms of Section 27. The Transmission Provider will conform to Good Utility Practice in determining the need for new facilities and in the design and construction of such facilities. The obligation applies only to those facilities that the Transmission Provider has the right to expand or modify.

15.5 Deferral of Service: The Transmission Provider may defer providing service until it completes construction of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

15.6 Other Transmission Service Schedules: Eligible Customers receiving transmission service under other agreements on file with the Commission may continue to receive transmission service under those agreements until such time as those agreements may be modified by the Commission.

15.7 Real Power Losses: Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Transmission Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are specified in the Service Agreements.

16 Transmission Customer Responsibilities

16.1 Conditions Required of Transmission Customers: Point-To-Point Transmission Service shall be provided by the Transmission Provider only if the following conditions are satisfied by the Transmission Customer:

a. The Transmission Customer has pending a Completed Application for service;
b. The Transmission Customer meets the creditworthiness criteria set forth in Section 11;
c. The Transmission Customer will have arrangements in place for any other transmission service necessary to effect the delivery from the generating source to the Transmission Provider prior to the time service under Part II of the Tariff commences;
d. The Transmission Customer agrees to pay for any facilities constructed and chargeable to such Transmission Customer under Part II of the Tariff, whether or not the Transmission Customer takes service for the full term of its reservation; and
e. The Transmission Customer has executed a Point-To-Point Service Agreement or has agreed to receive service pursuant to Section 15.3.

16.2 Transmission Customer Responsibility for Third-Party Arrangements: Any scheduling arrangements that may be required by other electric systems shall be the responsibility of the Transmission Customer requesting service. The Transmission Customer shall provide, unless waived by the Transmission Provider, notification to the Transmission Provider identifying such systems and authorizing them to schedule the capacity and energy to be transmitted by the Transmission Provider pursuant to Part II of the Tariff on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Receipt. However, the Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in making such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

17 Procedures for Arranging Firm Point-To-Point Transmission Service

17.1 Application: A request for Firm Point-To-Point Transmission Service for periods of one year or longer must contain a written Application to appropriate Regional Office, as identified in Attachment K to the Tariff, at least sixty (60) days in advance of the calendar month in which service is to commence. The Transmission Provider will consider requests for such firm service on shorter notice when feasible. Requests for firm service for periods of less than one year shall be subject to expedited procedures that shall be negotiated between the Parties within the time constraints provided in Section 17.5. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the priority of the Application.

17.2 Completed Application: A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;
(iii) The location of the Point(s) of Receipt and Point(s) of Delivery and the identities of the Delivering Parties and the Receiving Parties;
(iv) The location of the generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted. The Transmission Provider will treat this information as confidential except to the extent that disclosure of this information is required by the Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations;
(v) A description of the supply characteristics of the capacity and energy to be delivered;
(vi) An estimate of the capacity and energy expected to be delivered to the Receiving Party;
(vii) The Service Commencement Date and the term of the requested Transmission Service;
(viii) The transmission capacity requested for each Point of Receipt and each Point of Delivery on the Transmission Provider's Transmission System; customers may combine their requests for service in order to satisfy the minimum transmission capacity requirement;

The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

17.3 Processing Fee: A Completed Application for Firm Point-To-Point Transmission Service also shall include a non-refundable processing fee. Such fee shall be applicable to all Transmission Customers for firm Transmission Service requests of one year or longer. Individual Transmission Provider processing fees will be calculated using the number of estimated hours it will take to process an application and will be set forth in Attachment K. This fee does not apply to costs to complete System Impact Studies or Facility Studies or to add new facilities.

17.4 Notice of Deficient Application: If an Application fails to meet the requirements of the Tariff, the Transmission Provider shall notify the entity requesting service within fifteen (15) days of receipt of the reasons for such failure. The Transmission Provider will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application. Upon receipt of a new or revised Application that fully complies with the requirements of Part II of the Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

17.6 Execution of a Service Agreement: Whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable but no later than thirty (30) days after receipt of the Completed Application. Where a System Impact Study is required, the provisions of Section 19 will govern the execution of a Service Agreement. Failure of an Eligible Customer to execute and return the Service Agreement or request service without an executed Service Agreement pursuant to Section 15.3, within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application. Nothing herein limits the right of an Eligible Customer to file another Application after such withdrawal and termination.

17.7 Extensions for Commencement of Service: The Transmission Customer can obtain up to five (5) one-year extensions for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one-month's charge for Firm Transmission Service for each year or fraction thereof. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-To-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.

18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service

18.1 Application: Eligible Customers seeking Non-Firm Point-To-Point Transmission Service must submit a Completed Application to the Transmission Provider. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application.

18.2 Completed Application: A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:
(i) The identity, address, telephone number and facsimile number of the entity requesting service;
(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;
(iii) The Point(s) of Receipt and the Point(s) of Delivery;
(iv) The maximum amount of capacity

requested at each Point of Receipt and Point of Delivery; and

(v) The proposed dates and hours for initiating and terminating transmission service hereunder.

In addition to the information specified above, when required to properly evaluate system conditions, the Transmission Provider also may ask the Transmission Customer to provide the following:

(vi) The electrical location of the initial source of the power to be transmitted pursuant to the Transmission Customer's request for service;

(vii) The electrical location of the ultimate load

The Transmission Provider will treat this information in (vi) and (vii) as confidential at the request of the Transmission Customer except to the extent that disclosure of this information is required by this Tariff, by Federal Law or regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice, or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

18.3 Reservation of Non-Firm Point-To-Point Transmission Service: Requests for monthly service shall be submitted no earlier than sixty (60) days before service is to commence; requests for weekly service shall be submitted no earlier than fourteen (14) days before service is to commence, requests for daily service shall be submitted no earlier than two (2) days before service is to commence, and requests for hourly service shall be submitted no earlier than noon the day before service is to commence. Requests for service received later than 2:00 p.m. prior to the day service is scheduled to commence will be accommodated if practicable [or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

18.4 Determination of Available Transmission Capability: Following receipt of a tendered schedule the Transmission Provider will make a determination on a non-discriminatory basis of available transmission capability pursuant to Section 15.2. Such determination shall be made as soon as reasonably practicable after receipt, but not later than the following time periods for the following terms of service (i) thirty (30) minutes for hourly service, (ii) thirty (30) minutes for daily service, (iii) four (4) hours for weekly service, and (iv) two (2) days for monthly service. [Or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

19 Additional Study Procedures for Firm Point-To-Point Transmission Service Requests

19.1 Notice of Need for System Impact Study: After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its application shall be deemed withdrawn.

19.2 System Impact Study Agreement and Compensation:

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge will not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the requests for service, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

19.3 System Impact Study Procedures: Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request service without an executed Service Agreement pursuant to Section 15.3, or the Application shall be deemed terminated and withdrawn.

19.4 Facilities Study Procedures: If a System Impact Study indicates that

additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its application shall be deemed withdrawn. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Transmission Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Transmission Customer, (ii) the Transmission Customer's appropriate share of the cost of any required Network Upgrades as determined pursuant to the provisions of Part II of the Tariff, and (iii) the time required to complete such construction and initiate the requested service. The Transmission Customer shall pay the Transmission Provider in advance the Transmission Customer's share of the costs of new facilities or upgrades. The Transmission Customer shall have thirty (30) days to execute a construction agreement and a Service Agreement and provide the advance payment or request service without an executed Service Agreement pursuant to Section 15.3 and provide the required letter of credit or other form of security or the request will no longer be a Completed Application and shall be deemed terminated and withdrawn.

19.5 Facilities Study Modifications: Any change in design arising from inability to site or construct facilities as proposed will require development of a revised good faith estimate. New good faith estimates also will be required in the event of new statutory or regulatory requirements that are effective before the completion of construction or other circumstances beyond the control of the Transmission Provider that significantly affect the final cost of new facilities or upgrades to be charged to the Transmission Customer pursuant to the provisions of Part II of the Tariff.

19.6 Due Diligence in Completing New Facilities: The Transmission Provider shall use due diligence to add necessary facilities or upgrade its Transmission System within a reasonable time. The Transmission Provider will not upgrade its existing or planned Transmission System in order to provide the requested Firm Point-To-Point Transmission Service if doing so would impair system reliability or otherwise impair or degrade existing firm service.

19.7 Partial Interim Service: If the Transmission Provider determines that it will not have adequate transmission capability to satisfy the full amount of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider nonetheless shall be obligated to offer and provide the portion of the requested Firm Point-To-Point Transmission Service that can be accommodated without addition of any facilities and through redispatch. However, the Transmission Provider shall not be obligated to provide the incremental amount of requested Firm Point-To-Point Transmission Service that requires the addition of facilities or upgrades to the Transmission System until such facilities or upgrades have been placed in service.

19.8 Expedited Procedures for New Facilities: In lieu of the procedures set forth above, the Eligible Customer shall have the option to expedite the process by requesting the Transmission Provider to tender at one time, together with the results of required studies, an ''Expedited Service Agreement'' pursuant to which the Eligible Customer would agree to compensate the Transmission Provider in advance for all costs incurred pursuant to the terms of the Tariff. In order to exercise this option, the Eligible Customer shall request in writing an expedited Service Agreement covering all of the above-specified items within thirty (30) days of receiving the results of the System Impact Study identifying needed facility additions or upgrades or costs incurred in providing the requested service. While the Transmission Provider agrees to provide the Eligible Customer with its best estimate of the new facility costs and other charges that may be incurred, such estimate shall not be binding and the Eligible Customer must agree in writing to compensate the Transmission Provider in advance for all costs incurred pursuant to the provisions of the Tariff. The Eligible Customer shall execute and return such an Expedited Service Agreement within fifteen (15) days of its receipt or the Eligible Customer's request for service will cease to be a Completed Application and will be deemed terminated and withdrawn.

20 Procedures if the Transmission Provider Is Unable To Complete New Transmission Facilities for Firm Point-To-Point Transmission Service

20.1 Delays in Construction of New Facilities: If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Transmission Provider shall promptly notify the Transmission Customer. In such circumstances, the Transmission Provider shall within thirty (30) days of notifying the Transmission Customer of such delays, convene a technical meeting with the Transmission Customer to evaluate the alternatives available to the Transmission Customer. The Transmission Provider also shall make available to the Transmission Customer studies and work papers related to the delay, including all information that is in the possession of the Transmission Provider that is reasonably needed by the Transmission Customer to evaluate any alternatives.

20.2 Alternatives to the Original Facility Additions: When the review process of Section 20.1 determines that one or more alternatives exist to the originally planned construction project, the Transmission Provider shall present such alternatives for consideration by the Transmission Customer. If, upon review of any alternatives, the Transmission Customer desires to maintain its Completed Application subject to construction of the alternative facilities, it may request the Transmission Provider to submit a revised Service Agreement for Firm Point-To-Point Transmission Service. If the alternative approach solely involves Non-Firm Point-To-Point Transmission Service, the

Transmission Provider shall promptly tender a Service Agreement for Non-Firm Point-To-Point Transmission Service providing for the service. In the event the Transmission Provider concludes that no reasonable alternative exists and the Transmission Customer disagrees, the Transmission Customer may seek relief under the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

20.3 Refund Obligation for Unfinished Facility Additions: If the Transmission Provider and the Transmission Customer mutually agree that no other reasonable alternatives exist and the requested service cannot be provided out of existing capability under the conditions of Part II of the Tariff, the obligation to provide the requested Firm Point-To-Point Transmission Service shall terminate and any advance payment made by the Transmission Customer that is in excess of the costs incurred by the Transmission Provider through the time construction was suspended shall be returned. However, the Transmission Customer shall be responsible for all prudently incurred costs by the Transmission Provider through the time construction was suspended.

21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities

21.1 Responsibility for Third-Party System Additions: The Transmission Provider shall not be responsible for making arrangements for any necessary engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

21.2 Coordination of Third-Party System Additions: In circumstances where the need for transmission facilities or upgrades is identified pursuant to the provisions of Part II of the Tariff, and if such upgrades further require the addition of transmission facilities on other systems, the Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner. The Transmission Provider shall notify the Transmission Customer in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of new facilities. Within sixty (60) days of receiving written notification by the Transmission Provider of its intent to defer construction pursuant to this section, the Transmission Customer may challenge the decision in accordance with the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

22 Changes in Service Specifications

22.1 Modifications On a Non-Firm Basis: The Transmission Customer taking Firm Point-To-Point Transmission Service may request the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those specified in the Service Agreement (''Secondary Receipt and Delivery Points''), in amounts not to exceed its firm capacity reservation, without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement, subject to the following conditions.

(a) Service provided over Secondary Receipt and Delivery Points will be non-firm only, on an as-available basis and will not displace any firm or non-firm service reserved or scheduled by third-parties under the Tariff or by the Transmission Provider on behalf of its Native Load Customers.

(b) The sum of all Firm and non-firm Point-To-Point Transmission Service provided to the Transmission Customer at any time pursuant to this section shall not exceed the Reserved Capacity in the relevant Service Agreement under which such services are provided.

(c) The Transmission Customer shall retain its right to schedule Firm Point-To-Point Transmission Service at the Receipt and Delivery Points specified in the relevant Service Agreement in the amount of its original capacity reservation.

(d) Service over Secondary Receipt and Delivery Points on a non-firm basis shall not require the filing of an Application for Non-Firm Point-To-Point Transmission Service under the Tariff. However, all other requirements of Part II of the Tariff (except as to transmission rates) shall apply to transmission service on a non-firm basis over Secondary Receipt and Delivery Points.

22.2 Modifications On a Firm Basis: Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof except that such Transmission Customer shall not be obligated to pay any additional application processing fee if the capacity reservation does not exceed the amount reserved in the existing Service Agreement. While such new request is pending, the Transmission Customer shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

23 Sale or Assignment of Transmission Service

23.1 Procedures for Assignment or Transfer of Service: Subject to Commission approval of any necessary filings, a Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller. Compensation to the Reseller shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. A Reseller should notify the Transmission Provider as soon as possible after any assignment or transfer of service occurs but in any event, notification must be provided prior to any provision of service to the Assignee. The Assignee will be subject to all terms and conditions of the Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined

by the Transmission Provider pursuant to Section 13.2.

23.2 Limitations on Assignment or Transfer of Service: If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement, the Transmission Provider will consent to such change subject to the provisions of the Tariff, provided that the change will not impair the operation and reliability of the Transmission Provider's generation, transmission, or distribution systems. The Assignee shall compensate the Transmission Provider in advance for performing any System Impact Study needed to evaluate the capability of the Transmission System to accommodate the proposed change and any additional costs resulting from such change. The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Parties through an amendment to the Service Agreement.

23.3 Information on Assignment or Transfer of Service: In accordance with Section 4, Resellers may use the Transmission Provider's OASIS to post transmission capacity available for resale.

24 Metering and Power Factor Correction at Receipt and Delivery Point(s)

24.1 Transmission Customer Obligations: Unless otherwise agreed, the Transmission Customer shall be responsible for installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider. Such equipment shall remain the property of the Transmission Customer.

24.2 Transmission Provider Access to Metering Data: The Transmission Provider shall have access to metering data, which may reasonably be required to facilitate measurements and billing under the Service Agreement.

24.3 Power Factor: Unless otherwise agreed, the Transmission Customer is required to maintain a power factor within the same range as the Transmission Provider pursuant to Good Utility Practices. The power factor requirements are specified in the Service Agreement where applicable.

25 Compensation for Transmission Service

Rates for Firm and Non-Firm Point-To-Point Transmission Service are provided in the Schedules appended to the Tariff: Firm Point-To-Point Transmission Service (Schedule 7); and Non-Firm Point-To-Point Transmission Service (Schedule 8). The Transmission Provider shall use Part II of the Tariff to make its Third-Party Sales. The Transmission Provider shall account for such use at the applicable Tariff rates, pursuant to Section 8.

26 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Transmission Customer in a manner consistent with applicable Federal law and regulations.

27 Compensation for New Facilities and Redispatch Costs

Whenever a System Impact Study performed by the Transmission Provider in connection with the provision of Firm Point-To-Point Transmission Service identifies the need for new facilities, the Transmission Customer shall be responsible for such costs to the extent consistent with Commission policy. Whenever a System Impact Study performed by the Transmission Provider identifies capacity constraints that may be relieved more economically by redispatching the Transmission Provider's resources than by building new facilities or upgrading existing facilities to eliminate such constraints, the Transmission Customer shall be responsible for the redispatch costs to the extent consistent with Commission policy.

Part III. Network Integration Transmission Service

Preamble

The Transmission Provider will provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained in the Tariff and Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native Load Customers. Network Integration Transmission Service also may be used by the Network Customer to deliver economy energy purchases to its Network Load from non-designated resources on an as-available basis without additional charge. Transmission service for sales to non-designated loads will be provided pursuant to the applicable terms and conditions of Part II of the Tariff.

28 Nature of Network Integration Transmission Service

28.1 Scope of Service: Network Integration Transmission Service is a transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the Transmission Provider's Control Area and any additional load that may be designated pursuant to Section 31.3 of the Tariff. The Network Customer taking Network Integration Transmission Service must obtain or provide Ancillary Services pursuant to Section 3.

28.2 Transmission Provider Responsibilities: The Transmission Provider will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System. The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of the Tariff. This information must be consistent with the information used by the Transmission Provider to calculate available transmission capability. The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient transmission capacity to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers. This obligation to construct and place into service sufficient capacity to deliver the Network Customer's Network Resources to serve its Network Load is contingent upon the availability to Western of sufficient appropriations, when needed, and the Transmission Customer's advanced funds.

28.3 Network Integration Transmission Service: The Transmission Provider will provide firm transmission service over its Transmission System to the

Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission Provider's use of the Transmission System to reliably serve its Native Load Customers.

28.4 Secondary Service: The Network Customer may use the Transmission Provider's Transmission System to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. Deliveries from resources other than Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under Part II of the Tariff.

28.5 Real Power Losses: Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Network Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are specified in the Service Agreements.

28.6 Restrictions on Use of Service: The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System.

29 Initiating Service

29.1 Condition Precedent for Receiving Service: Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer provided that (i) the Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider provide service without an executed Service Agreement, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G. If the Transmission Provider and the Network Customer cannot agree on all the terms and conditions of the Network Service Agreement, the Transmission Provider shall commence providing Network Integration Transmission Service subject to the Network Customer agreeing to (i) compensate the Transmission Provider at the existing rate placed in effect pursuant to applicable Federal law and regulations, and (ii) comply with the terms and conditions of the Tariff including paying the appropriate processing fees in accordance with the terms of Section 29.2. If the Network Customer cannot accept all of the terms and conditions of the offered Service Agreement, the Network Customer may request resolution of the unacceptable terms and conditions under Section 12, Dispute Resolution Procedures, of the Tariff. Any changes resulting from the Dispute Resolution Procedures will be effective upon the date of initial service.

29.2 Application Procedures: An Eligible Customer requesting service under Part III of the Tariff must submit an Application to the Transmission Provider as far as possible in advance of the month in which service is to commence. Unless subject to the procedures in Section 2, Completed Applications for Network Integration Transmission Service will be assigned a priority according to the date and time the Application is received, with the earliest Application receiving the highest priority. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application. A Completed Application for Network Integration Transmission Service also shall include a non-refundable processing fee. Such fee shall be applicable to all Transmission Customers for firm Transmission Service requests of one year or longer. Individual Transmission Provider processing fees will be calculated using the number of estimated hours it will take to process an application and will be set forth in Attachment K. This fee does not apply to costs to complete System Impact Studies or Facility Studies or to add new facilities. A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the party requesting service;

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) A description of the Network Load at each delivery point. This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Transmission Provider substation at the same transmission voltage level. The description should include a ten (10) year forecast of summer and winter load and resource requirements beginning with the first year after the service is scheduled to commence;

(iv) The amount and location of any interruptible loads included in the Network Load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been interruptible), that portion of the load subject to interruption, the conditions under which an interruption can be implemented and any limitations on the amount and frequency of interruptions. An Eligible Customer should identify the amount of interruptible customer load (if any), included in the 10 year load forecast provided in response to (iii) above;

(v) A description of Network Resources (current and 10-year projection), which shall include, for each Network Resource:

—Unit size and amount of capacity from that unit to be designated as Network Resource
—VAR capability (both leading and lagging), of all generators
—Operating restrictions
—Any periods of restricted operations throughout the year
—Maintenance schedules
—Minimum loading level of unit
—Normal operating level of unit

—Any must-run unit designations required for system reliability or contract reasons
—Approximate variable generating cost ($/MWH) for redispatch computations
—Arrangements governing sale and delivery of power to third parties from generating facilities located in the Transmission Provider Control Area, where only a portion of unit output is designated as a Network Resource
—Description of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System;

(vi) Description of Eligible Customer's transmission system:
—Load flow and stability data, such as real and reactive parts of the load, lines, transformers, reactive devices and load type, including normal and emergency ratings of all transmission equipment in a load flow format compatible with that used by the Transmission Provider
—Operating restrictions needed for reliability
—Operating guides employed by system operators
—Contractual restrictions or committed uses of the Eligible Customer's transmission system, other than the Eligible Customer's Network Loads and Resources
—Location of Network Resources described in subsection (v) above
—10 year projection of system expansions or upgrades
—Transmission System maps that include any proposed expansions or upgrades
—Thermal ratings of Eligible Customer's Control Area ties with other Control Areas;

(vii) Service Commencement Date and the term of the requested Network Integration Transmission Service. The minimum term for Network Integration Transmission Service is one year;

Unless the Parties agree to a different time frame, the Transmission Provider must acknowledge the request within ten (10) days of receipt. The acknowledgment must include a date by which a response, including a Service Agreement, will be sent to the Eligible Customer. If an Application fails to meet the requirements of this section, the Transmission Provider shall notify the Eligible Customer requesting service within fifteen (15) days of receipt and specify the reasons for such failure. Wherever possible, the Transmission Provider will attempt to remedy deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application without prejudice to the Eligible Customer filing a new or revised Application that fully complies with the requirements of this section. The Eligible Customer will be assigned a new priority consistent with the date of the new or revised Application. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

29.3 Technical Arrangements to be Completed Prior to Commencement of Service: Network Integration Transmission Service shall not commence until the Transmission Provider and the Network Customer or a third party, have completed installation of all equipment specified under the Network Operating Agreement consistent with Good Utility Practice and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Transmission System. The Transmission Provider shall exercise reasonable efforts, in coordination with the Network Customer to complete such arrangements as soon as practicable taking into consideration the Service Commencement Date.

29.4 Network Customer Facilities: The provision of Network Integration Transmission Service shall be conditioned upon the Network Customer constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from the Transmission Provider's Transmission System to the Network Customer. The Network Customer shall be solely responsible for constructing or installing all facilities on the Network Customer's side of each such delivery point or interconnection.

29.5 This section is intentionally left blank.

30 Network Resources

30.1 Designation of Network Resources: Network Resources shall include all generation owned, purchased, or leased by the Network Customer designated to serve Network Load under the Tariff. Network Resources may not include resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis. Any owned or purchased resources that were serving the Network Customer's loads under firm agreements entered into on or before the Service Commencement Date shall initially be designated as Network Resources until the Network Customer terminates the designation of such resources.

30.2 Designation of New Network Resources: The Network Customer may designate a new Network Resource by providing the Transmission Provider with as much advance notice as practicable. A designation of a new Network Resource must be made by a request for modification of service pursuant to an Application under Section 29.

30.3 Termination of Network Resources: The Network Customer may terminate the designation of all or part of a generating resource as a Network Resource at any time but should provide notification to the Transmission Provider as soon as reasonably practicable.

30.4 Operation of Network Resources: The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus non-firm sales delivered pursuant to Part II of the Tariff, plus losses. This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System.

30.5 Network Customer Redispatch Obligation: As a condition to receiving Network Integration Transmission Service, the Network Customer agrees to redispatch its Network Resources as requested by the Transmission Provider pursuant to Section 33.2. To the extent practical, the redispatch of resources pursuant to this section shall be on a least cost, non-discriminatory basis between all Network Customers, and the Transmission Provider.

30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With The Transmission Provider: The Network Customer shall be responsible for any arrangements necessary to deliver capacity and energy from a Network Resource not physically interconnected with the Transmission Provider's Transmission System. The Transmission Provider will undertake

reasonable efforts to assist the Network Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other entity pursuant to Good Utility Practice.

30.7 Limitation on Designation of Network Resources: The Network Customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a Network Resource. Alternatively, the Network Customer may establish that execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff.

30.8 Use of Interface Capacity by the Network Customer: There is no limitation upon a Network Customer's use of the Transmission Provider's Transmission System at any particular interface to integrate the Network Customer's Network Resources (or substitute economy purchases) with its Network Loads. However, a Network Customer's use of the Transmission Provider's total interface capacity with other transmission systems may not exceed the Network Customer's Load.

30.9 Network Customer Owned Transmission Facilities: The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers. For facilities constructed by the Network Customer subsequent to the Service Commencement Date under Part III of the Tariff, the Network Customer shall receive credit where such facilities are jointly planned and installed in coordination with the Transmission Provider. Calculation of the credit shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

31 Designation of Network Load

31.1 Network Load: The Network Customer must designate the individual Network Loads on whose behalf the Transmission Provider will provide Network Integration Transmission Service. The Network Loads shall be specified in the Service Agreement.

31.2 New Network Loads Connected With the Transmission Provider: The Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable of the designation of new Network Load that will be added to its Transmission System. A designation of new Network Load must be made through a modification of service pursuant to a new Application. The Transmission Provider will use due diligence to install any transmission facilities required to interconnect a new Network Load designated by the Network Customer. The costs of new facilities required to interconnect a new Network Load shall be determined in accordance with the procedures provided in Section 32.4 and shall be charged to the Network Customer in accordance with Commission policies.

31.3 Network Load Not Physically Interconnected with the Transmission Provider: This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Provider. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Provider's Transmission System, the Network Customer shall have the option of (1) electing to include the entire load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that entire load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.

31.4 New Interconnection Points: To the extent the Network Customer desires to add a new Delivery Point or interconnection point between the Transmission Provider's Transmission System and a Network Load, the Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable.

31.5 Changes in Service Requests: Under no circumstances shall the Network Customer's decision to cancel or delay a requested change in Network Integration Transmission Service (*e.g.* the addition of a new Network Resource or designation of a new Network Load) in any way relieve the Network Customer of its obligation to pay the costs of transmission facilities constructed by the Transmission Provider and charged to the Network Customer as reflected in the Service Agreement. However, the Transmission Provider must treat any requested change in Network Integration Transmission Service in a non-discriminatory manner. The Transmission Provider will have no obligation to refund any advance of funds expended for purposes of providing facilities for a Network Customer. However, upon receipt of a Network Customer's written notice of such a cancellation or delay, the Transmission Provider will use the same reasonable efforts to mitigate the costs and charges owed to the Transmission Provider as it would to reduce its own costs and charges.

31.6 Annual Load and Resource Information Updates: The Network Customer shall provide the Transmission Provider with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Transmission Service under Part III of the Tariff. The Network Customer also shall provide the Transmission Provider with timely written notice of material changes in any other information provided in its Application relating to the Network Customer's Network Load, Network Resources, its transmission system or other aspects of its facilities or operations affecting the Transmission Provider's ability to provide reliable service.

32 Additional Study Procedures For Network Integration Transmission Service Requests

32.1 Notice of Need for System Impact Study: After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to advance funds

to the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its Application shall be deemed withdrawn.

32.2 System Impact Study Agreement and Compensation:

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the service requests, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

32.3 System Impact Study Procedures: Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request service without an executed Service Agreement pursuant to Section 29.1, or the Application shall be deemed terminated and withdrawn.

32.4 Facilities Study Procedures: If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Eligible Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Eligible Customer, (ii) the Eligible Customer's appropriate share of the cost of any required Network Upgrades, and (iii) the time required to complete such construction and initiate the requested service. The Eligible Customer shall advance funds to the Transmission Provider for the construction of new facilities and such advance and construction shall be provided for in a separate agreement. If the construction of new facilities requires the expenditure of Transmission Provider funds, such construction shall be contingent upon the availability of appropriated funds. The Eligible Customer shall have thirty (30) days to execute a construction agreement and a Service Agreement and provide the advance payment or request service without an executed Service Agreement pursuant to Section 29.1 and provide the required letter of credit or other form of security or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

33 Load Shedding and Curtailments

33.1 Procedures: Prior to the Service Commencement Date, the Transmission Provider and the Network Customer shall establish Load Shedding and Curtailment procedures pursuant to the Network Operating Agreement with the objective of responding to contingencies on the Transmission System. The Parties will implement such programs during any period when the Transmission Provider determines that a system contingency exists and such procedures are necessary to alleviate such contingency. The Transmission Provider will notify all affected Network Customers in a timely manner of any scheduled Curtailment.

33.2 Transmission Constraints: During any period when the Transmission Provider determines that a transmission constraint exists on the Transmission System, and such constraint may impair the reliability of the Transmission Provider's system, the Transmission Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Transmission Provider's system. To the extent the Transmission Provider determines

that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis without regard to the ownership of such resources. Any redispatch under this section may not unduly discriminate between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

33.3 Cost Responsibility for Relieving Transmission Constraints: Whenever the Transmission Provider implements least-cost redispatch procedures in response to a transmission constraint, the Transmission Provider and Network Customers will each bear a proportionate share of the total redispatch cost based on their respective Load Ratio Shares.

33.4 Curtailments of Scheduled Deliveries: If a transmission constraint on the Transmission Provider's Transmission System cannot be relieved through the implementation of least-cost redispatch procedures and the Transmission Provider determines that it is necessary to Curtail scheduled deliveries, the Parties shall Curtail such schedules in accordance with the Network Operating Agreement.

33.5 Allocation of Curtailments: The Transmission Provider shall, on a non-discriminatory basis, Curtail the transaction(s) that effectively relieve the constraint. However, to the extent practicable and consistent with Good Utility Practice, any Curtailment will be shared by the Transmission Provider and Network Customer in proportion to their respective Load Ratio Shares. The Transmission Provider shall not direct the Network Customer to Curtail schedules to an extent greater than the Transmission Provider would Curtail the Transmission Provider's schedules under similar circumstances.

33.6 Load Shedding: To the extent that a system contingency exists on the Transmission Provider's Transmission System and the Transmission Provider determines that it is necessary for the Transmission Provider and the Network Customer to shed load, the Parties shall shed load in accordance with previously established procedures under the Network Operating Agreement.

33.7 System Reliability: Notwithstanding any other provisions of this Tariff, the Transmission Provider reserves the right, consistent with Good Utility Practice and on a not unduly discriminatory basis, to Curtail Network Integration Transmission Service without liability on the Transmission Provider's part for the purpose of making necessary adjustments to, changes in, or repairs on its lines, substations and facilities, and in cases where the continuance of Network Integration Transmission Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Transmission Provider's Transmission System or on any other system(s) directly or indirectly interconnected with the Transmission Provider's Transmission System, the Transmission Provider, consistent with Good Utility Practice, also may Curtail Network Integration Transmission Service in order to (i) limit the extent or damage of the adverse condition(s) or disturbance(s), (ii) prevent damage to generating or transmission facilities, or (iii) expedite restoration of service. The Transmission Provider will give the Network Customer as much advance notice as is practicable in the event of such Curtailment. Any Curtailment of Network Integration Transmission Service will be not unduly discriminatory relative to the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that the Network Customer fails to respond to established Load Shedding and Curtailment procedures.

34 Rates and Charges

The Network Customer shall pay the Transmission Provider for any Direct Assignment Facilities, Ancillary Services, and applicable study costs, consistent with Federal policy, along with the following:

34.1 Monthly Demand Charge: The Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement specified in Schedule H.

34.2 Determination of Network Customer's Monthly Network Load: The Network Customer's monthly Network Load is its hourly load (including its designated Network Load not physically interconnected with the Transmission Provider under Section 31.3) coincident with the Transmission Provider's Monthly Transmission System Peak.

34.3 Determination of Transmission Provider's Monthly Transmission System Load: The Transmission Provider's monthly Transmission System load is the Transmission Provider's Monthly Transmission System Peak minus the coincident peak usage of all Firm Point-To-Point Transmission Service customers pursuant to Part II of this Tariff plus the Reserved Capacity of all Firm Point-To-Point Transmission Service customers.

34.4 Redispatch Charge: The Network Customer shall pay a Load Ratio Share of any redispatch costs allocated between the Network Customer and the Transmission Provider pursuant to Section 33. To the extent that the Transmission Provider incurs an obligation to the Network Customer for redispatch costs in accordance with Section 33, such amounts shall be credited against the Network Customer's bill for the applicable month.

34.5 Stranded Cost Recovery: The Transmission Provider may seek to recover stranded costs from the Network Customer in a manner consistent with applicable Federal law and regulations.

35 Operating Arrangements

35.1 Operation under The Network Operating Agreement: The Network Customer shall plan, construct, operate and maintain its facilities in accordance with Good Utility Practice and in conformance with the Network Operating Agreement.

35.2 Network Operating Agreement: The terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Part III of the Tariff shall be specified in the Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to (i) operate and maintain equipment necessary for integrating the Network Customer within the Transmission Provider's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment and relaying equipment), (ii) transfer data between the Transmission Provider and the Network Customer (including, but not limited to, heat rates and operational characteristics of Network Resources, generation

schedules for units outside the Transmission Provider's Transmission System, interchange schedules, unit outputs for redispatch required under Section 33, voltage schedules, loss factors and other real time data), (iii) use software programs required for data links and constraint dispatching, (iv) exchange data on forecasted loads and resources necessary for long-term planning, and (v) address any other technical and operational considerations required for implementation of Part III of the Tariff, including scheduling protocols. The Network Operating Agreement will recognize that the Network Customer shall either (i) operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC) and the applicable regional reliability council, (ii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with the Transmission Provider, or (iii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with another entity, consistent with Good Utility Practice, which satisfies NERC and the applicable regional reliability council requirements. The Transmission Provider shall not unreasonably refuse to accept contractual arrangements with another entity for Ancillary Services. The Network Operating Agreement is included in Attachment G.

35.3 Network Operating Committee: A Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under the Network Operating Agreement. Each Network Customer shall be entitled to have at least one representative on the Committee. The Committee shall meet from time to time as need requires, but no less than once each calendar year.

Schedule 1

Scheduling, System Control and Dispatch Service

This service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is provided directly by the Transmission Provider if the Transmission Provider is the Control Area Operator or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for Scheduling, System Control and Dispatch Service are to be based on the rates referred to below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Scheduling, System Control and Dispatch Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Scheduling, System Control and Dispatch Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Scheduling, System Control and Dispatch Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 2

Reactive Supply and Voltage Control From Generation Sources Service

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities under the control of the Control Area operator are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service must be provided for each transaction on the Transmission Provider's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

Reactive Supply and Voltage Control from Generation Sources Service can be provided directly by the Transmission Provider if the Transmission Provider is the Control Area operator or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for such service will be based upon the rates referred to below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area Operator.

The Transmission System specific charges for Reactive Supply and Voltage Control from Generation Sources Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Reactive Supply and Voltage Control from Generation Sources Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Reactive Supply and Voltage Control from Generation Sources Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 3

Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the

moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The charges for Regulation and Frequency Response Service are referred to below. The amount of Regulation and Frequency Response Service will be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Regulation and Frequency Response Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Regulation and Frequency Response Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Regulation and Frequency Response Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 4

Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either obtain this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission Provider shall establish a deviation band of +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within thirty (30) days or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider. If an energy imbalance is not corrected within thirty (30) days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the Transmission Provider, the Transmission Customer will compensate the Transmission Provider for such service. Energy imbalances outside the deviation band will be subject to charges to be specified by the Transmission Provider. Compensation for Energy Imbalance Service will be as set forth below.

The Transmission System specific compensation for Energy Imbalance Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the compensation for Energy Imbalance Service upon written notice to the Transmission Customer. Any change to the compensation to the Transmission Customer for Energy Imbalance Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 5

Operating Reserve—Spinning Reserve Service

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The charges for Spinning Reserve Service are referred to below. The amount of Spinning Reserve Service will be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Operating Reserve—Spinning Reserve Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Operating Reserve—Spinning Reserve Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Operating Reserve—Spinning Reserve Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 6

Operating Reserve—Supplemental Reserve Service

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make

alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The charges for Supplemental Reserve Service are referred to below. The amount of Supplemental Reserve Service will be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Operating Reserve—Supplemental Reserve Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Operating Reserve—Supplemental Reserve Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Operating Reserve—Supplemental Reserve Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 7

Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity pursuant to the Transmission System specific Firm Point-to-Point Transmission Service Rate Schedule attached to and made a part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts: Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Schedule 8

Non-Firm Point-To-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider for Non-Firm Point-to-Point Transmission Service pursuant to the Transmission System specific Non-Firm Point-to-Point Transmission Service Rate Schedule attached to and made a part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts: Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Attachment A

Form of Service Agreement for Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between the (Region) of Western Area Power Administration (Transmission Provider), and _____ (Transmission Customer). The Transmission Provider may revise charges or losses for Firm Point-to-Point Transmission Service provided under this Service Agreement pursuant to applicable Federal Laws, regulations and policies upon written notice to the Transmission Customer.

2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed Application for Firm Point-To-Point Transmission Service under the Tariff.

3.0 The Transmission Customer has provided to the Transmission Provider a nonrefundable Application processing fee in accordance with the provisions of Section 17.3 of the Tariff.

4.0 Service under this agreement shall commence on the later of (1) the requested Service Commencement Date, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as is mutually agreed. Service under this agreement shall terminate on _____.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff, and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

7.0 The Tariff and the ''Specifications For Long-Term Firm Point-To-Point'' as presently constituted or as they may be revised or superseded are incorporated herein and made a part hereof.

In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Western Area Power Administration

By: _____

Title: _____

Address: _____

_____

Date: _____

(Transmission Customer)

By: _____

Title: _____

Address: _____

_____

Date: _____

Specifications for Long-Term Firm Point-To-Point Transmission Service

For purposes of this Service Agreement, the Transmission Provider's Transmission System consists of the facilities of the (Region) as described in Attachment K.

1.0 Term of Transaction: _____
Start Date: _____
Termination Date: _____

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

_____

3.0 Point(s) of Receipt: _____
Delivering Party: _____
Capacity Reservation: _____

4.0 Point(s) of Delivery: _____
Receiving Party: _____
Capacity Reservation: _____

5.0 The Maximum amount of capacity and energy to be transmitted (Reserved Capacity) is : ____

6.0 Designation of party(ies) subject to reciprocal service obligation:

_____

_____

_____

7.0 Name of the Control Area from which capacity and energy will be delivered to the Transmission Provider for Transmission Service:

_____

Name of the Control Area to which capacity and energy will be delivered by the Transmission Provider:

_____

Name(s) of any Intervening Systems providing transmission service:

_____

_____

8.0 Service under this Agreement may be subject to some combination of the charges detailed below. The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.

8.1 Transmission Charge: _____

8.2 System Impact and/or Facilities Study Charge(s):

_____

_____

8.3 Direct Assignment Facilities Charge:

_____

8.4 Ancillary Services Charges:

_____

_____

_____

_____

8.5 Redispatch Charges:

To be filled in if applicable.

8.6 Network Upgrade Charges:
To be filled in if applicable

9.0 *Power Factor:* The Transmission Customer will be required to maintain a power factor between ____-percent lagging and ____-percent leading for all deliveries of capacity and energy to and from the Transmission Provider's Transmission System.

10.0 *Transmission Losses*

10.1 *Loss Factors:*

10.1.1 If, based on operating experience and technical studies, the Transmission Provider determines that any of the transmission loss factors on the Transmission Provider's Transmission System differs from the loss factors set forth in this Service Agreement, the Transmission Provider reserves the right to update this Service Agreement to reflect such revised loss factors.

10.1.2 Transmission Provider Transmission Loss Factor: Transmission Provider transmission losses shall be ____% and shall be assessed on the power scheduled and transmitted to a point of delivery on the Transmission Provider's Transmission System.

11.0 *Ancillary Services*

11.1 Provided by Transmission Provider

11.1.1 Scheduling, System Control, and Dispatch Service

11.1.2 Reactive Supply and Voltage Control from Generation Sources Service

11.2 Provided by Transmission Customer

11.2.1 (To be filled in if applicable)

11.2.2

11.3 Provided by _____

11.3.1 (To be filled in if applicable)

11.3.2

12.0 *Net Billing and Bill Crediting Option:* The Parties have agreed to implement [Net Billing, Bill Crediting, or both] as set forth in Attachment J.

13.0 *Charges for Service:* Charges for Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

Attachment B

Form Of Service Agreement For Non-Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between the (Region) of Western Area Power Administration (Transmission Provider), and _____ (Transmission Customer). The Transmission Provider may revise charges or losses for Non-Firm Point-to-Point Transmission Service provided under this Service Agreement pursuant to applicable Federal laws, regulations and policies upon written notice to the Transmission Customer.

2.0 The Transmission Customer has been determined by the Transmission Provider to be a Transmission Customer under Part II of the Tariff and has filed a Completed Application for Non-Firm Point-To-Point Transmission Service in accordance with Section 18.2 of the Tariff.

3.0 Service under this Service Agreement shall be provided by the Transmission Provider upon request by an authorized representative of the Transmission Customer. For purposes of this Service Agreement, the Transmission Provider's Transmission System consists of the facilities of the (Region) as described in Attachment K.

4.0 The Transmission Customer agrees to supply information the Transmission Provider deems reasonably necessary in accordance with Good Utility Practice in order for it to provide the requested service.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Non-Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff, and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

7.0 The Tariff as presently constituted or as it may be revised or superseded

is incorporated herein and made a part hereof.

8.0 *Power Factor:* The Transmission Customer will be required to maintain a power factor between ____-percent lagging and ____-percent leading for all deliveries of capacity and energy to and from the Transmission Provider's Transmission System.

9.0 *Transmission Losses:*

9.1 *Loss Factors:*

9.1.1 If, based on operating experience and technical studies, the Transmission Provider determines that any of the transmission loss factors on the Transmission Provider's Transmission Systems differ from the loss factors set forth in this Service Agreement, the Transmission Provider reserves the right to update this Service Agreement to reflect such revised loss factors.

9.1.2 *Transmission Provider Transmission Loss Factor:* Transmission Provider transmission losses shall be ____% and shall be assessed on the power scheduled and transmitted to a point of delivery on the Transmission Provider's Transmission System.

10.0 *Ancillary Services*

10.1 Provided by Transmission Provider

10.1.1 Scheduling, System Control, and Dispatch Service

10.1.2 Reactive Supply and Voltage Control from Generation Sources Service

10.2 Provided by Transmission Customer

10.2.1 To be filled in if appropriate

10.2.2

10.3 Provided by _____

10.3.1 To be filled in if appropriate

10.3.2

11.0 *Net Billing and Bill Crediting Option:* The Parties have agreed to implement [Net Billing, Bill Crediting, or both] as set forth in Attachment J.

12.0 *Charges for Service:* Charges for Non-Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

WESTERN AREA POWER ADMINISTRATION

By: _____

Title: _____

Address: _____

Date: _____

(TRANSMISSION CUSTOMER)

By: _____

Title: _____

Address: _____

Date: _____

Attachment C

Methodology To Assess Available Transmission Capability

The Transmission Provider will compute the transmission transfer capability available on a point-to-point basis from the Delivering Party to the Receiving Party using Good Utility Practice and the engineering and operating principles, standards, guidelines and criteria of the Transmission Provider, the applicable Regional Reliability Council, any entity of which the Transmission Provider is a member and is approved by the Commission to promulgate or apply regional or national reliability planning standards (such as a regional transmission group, RTG), or any similar organization that may exist in the future of which the Transmission Provider is then a member. Principal items used to determine maximum transmission transfer capability available shall include reliability, transmission element loading, system contingency performance, voltage levels, and stability. In determining Available Transmission Capability, the Transmission Provider will reserve sufficient transmission capability to meet its current and forecasted power service obligations, current and forecasted Network Customer loads, and existing transmission service obligations.

Attachment D

Methodology For Completing a System Impact Study

The Transmission Provider will assess the capability of the Transmission System to provide the service requested using the criteria and process for this assessment as detailed in Sections 4 and 5 of the Transmission Provider's annual FERC Form 715 submittal in those instances where the Transmission Provider is a member of the Western Systems Coordinating Council. (CRSP, DSW, RMR, and SNR) The Transmission Provider will use the Mid-Continent Area Power Pool (MAPP) System Impact Study Methodology when the Transmission Provider is a member of MAPP. (UGPR)

Attachment E

Index of Point-To-Point Transmission Service Customers

Customer	Date of service agreement

Attachment F

Service Agreement For Network Integration Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between the (Region) of Western Area Power Administration (Transmission Provider), and _____ (Transmission Customer).

2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed Application for Network Integration Transmission Service under the Tariff.

3.0 Service under this Service Agreement shall commence on the later of (1) _____, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as is mutually agreed. Service under this Service Agreement shall terminate on _____.

4.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Network Integration Transmission Service in accordance with the provisions of Part III of the Tariff, and this Service Agreement.

5.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

6.0 The Tariff and the ''Specifications for Network Integration Transmission Service'' as presently constituted or as they may be revised or superseded are incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

WESTERN AREA POWER ADMINISTRATION

By: _____
Title: _____
Address: _____
_____
Date: _____

(TRANSMISSION CUSTOMER)

By: _____
Title: _____
Address: _____
_____
Date: _____

Specifications for Network Integration Transmission Service

For purposes of this Service Agreement, the Transmission Provider's Transmission System consists of the facilities of the (Region) as described in Attachment K.

1.0 The Transmission Provider will provide Network Integration Transmission Service over the Transmission Provider's Transmission System for the delivery of capacity and energy from the Network Customer's designated Network Resources to the Network Customer's designated Network Load. The Transmission Provider will also provide non-firm transmission service from non-designated Network Resources under the terms of this Service Agreement. The loss factors associated with this Network Integration Transmission Service are set forth below. Such losses shall be applied and accounted for as set forth in Section 4.

2.0 *Designated Network Resources:*

Designated Network Resources & Estimated Maximum Resource (MW)	Point of Receipt	Delivering Party & Voltage

3.0 *Designated Network Loads:*

Designated Network Load & Estimated Maximum Resource (MW)	Point of Delivery	Voltage

4.0 *Transmission Losses:*

4.1 *Loss Factors:*

4.1.1 If, based on operating experience and technical studies, the Transmission Provider determines that any of the transmission loss factors on the Transmission Provider's Transmission System differ from the loss factors set forth in this Service Agreement, the Transmission Provider reserves the right to update this Service Agreement to reflect such revised loss factors.

4.1.2 *Transmission Provider Transmission Loss Factor:* For deliveries to the Network Customer Network Load, Transmission Provider transmission losses shall be—% and shall be assessed on the power scheduled and transmitted to a point of delivery on the Transmission Provider's Transmission System.

4.2 Transmission losses may be revised by written notice from the Transmission Provider to the Transmission Customer.

5.0 The Network Customer's transmission facilities that are integrated with the Transmission Provider's Transmission System will receive _____ credit. These facilities include the following:

5.1 _____
5.2 _____

6.0 Names of any intervening systems with whom the Network Customer has arranged for transmission service to the Transmission Provider's Transmission System.

6.1 _____
6.2 _____

7.0 *Power Factor:* The Transmission Customer will be required to maintain a power factor between__-percent lagging and__-percent leading for all deliveries of capacity and energy to and from the Transmission Provider's Transmission System.

8.0 *Ancillary Services*

8.1 Provided by Transmission Provider

8.1.1 Scheduling, System Control, and Dispatch Service

8.1.2 Reactive Supply and Voltage Control from Generation Sources Service

8.2 Provided by Transmission Customer

8.2.1 (To be filled in if appropriate)

8.2.2

8.3 Provided by _____

8.3.1 (To be filled in if appropriate)

8.3.2

9.0 *Net Billing and Bill Crediting Option:* The Parties have agreed to implement [Net Billing, Bill Crediting, or both] as set forth in Attachment J.

10.0 *Charges for Service:* Charges for associated Ancillary Services shall be calculated in accordance with [Rate Schedule] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

Attachment G

Network Operating Agreement

To be filed by the Transmission Provider at such time as the Transmission Provider has negotiated or

offered a Network Integration Transmission Service Agreement. The terms and conditions under which the Network Customer will be required to operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service and this Service Agreement will be specified in a separate Network Operating Agreement.

The Network Operating Agreement will include provisions addressing the following:

Authorized Representatives of the Parties
Network Operating Committee
Load Following
System Protection
Redispatch to Manage Transmission Constraints
Maintenance of Facilities
Load Shedding
Operation Impacts
Service Conditions
Data, Information and Reports
Metering
Communications
System Regulation and Operating Reserves
Assignment
Notices
Accounting for Transmission Losses

(Alternative language to be used only by UGPR) Network Integration Transmission provided by the Transmission Provider will be subject to all operating and scheduling procedures and protocols of the Mid-Continent Area Power Pool (MAPP) as stated in the MAPP Restated Agreement and the MAPP Operating Handbook as existing and as may be amended, superseded or replaced. The Transmission Provider will therefore not enter into a separate Network Operating Agreement with each Network Customer.

Attachment H

Annual Transmission Revenue Requirement For Network Integration Transmission Service

1.0 The Annual Transmission Revenue Requirement for purposes of the Network Integration Transmission Service is to be set forth in a separate Rate Schedule.

2.0 The amount in 1 shall be effective until amended by the Transmission Provider or modified by the Commission pursuant to applicable Federal laws, regulations and policies, and may be revised upon written notice to the Transmission Customer.

3.0 The Transmission Provider will charge the Network Customer a charge equal to ten (10) times the highest charge incurred during the preceding twelve months for any use of the Transmission Provider's Transmission System not in compliance with the terms and conditions of Part III of this Tariff.

Attachment I

Index of Network Integration Transmission Service Customers

Customer	Date of service agreement

Attachment J

Provisions Specific To The Transmission Provider

1.0 Change of Rates

Rates applicable under the Service Agreements shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under a Service Agreement, it will promptly notify the Transmission Customer thereof. Rates shall become effective as to the Service Agreements as of the effective date of such rate. The Transmission Customer, by written notice to the Transmission Provider within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by the Transmission Provider under the new rate. Said termination shall be effective on the last day of the billing period requested by the Transmission Customer not later than two (2) years after the effective date of the new rate. Service provided by the Transmission Provider shall be paid for at the new rate regardless of whether the Transmission Customer exercises the option to terminate service.

2.0 Contingent Upon Appropriations

Where activities provided for in the Service Agreement extend beyond the current fiscal year, continued expenditures by the Transmission Provider are contingent upon Congress making necessary appropriations required for the continued performance of the Transmission Provider's obligations under the Service Agreement. In the event that such appropriation by Congress is not made, The Transmission Customer hereby releases the Transmission Provider from its obligations under the Service Agreement and from all liability due to the failure of Congress to make such appropriation.

3.0 Covenant Against Contingent Fees

The Transmission Customer warrants that no person or selling agency has been employed or retained to solicit or secure the Service Agreement upon a contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Transmission Customer for the purpose of securing business. For breach or violation of this warranty, the Transmission Provider shall have the right to annul the Service Agreement without liability or in its discretion to deduct from the Service Agreement price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

4.0 Contract Work Hours and Safety Standards

The Service Agreement, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 329 (1986), is subject to the provisions of the Act, 40 U.S.C. §§ 327–333 (1986), and to regulations promulgated by the Secretary of Labor pursuant to the Act.

5.0 Equal Opportunity Employment Practices

Section 202 of Executive Order No. 11246, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Transmission Customer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Service Agreement.

6.0 Use of Convict Labor

The Transmission Customer agrees not to employ any person undergoing sentence of imprisonment in performing the Service Agreement except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

7.0 Independent System Operator

The Parties understand that the Transmission Provider may join an Independent System Operator. An Independent System Operator (ISO) is defined as a Commission regulated control area operator of the ISO transmission grid. Its responsibilities include providing non-discriminatory access, managing congestion, and maintaining the reliability and security of the grid. In the event the Transmission Provider either joins or is required to conform to protocols of the Independent System Operator, the

Parties agree that the Transmission Provider either may (1) modify the relevant provisions of the Tariff and the Service Agreement to conform them to the terms and conditions required by the Independent System Operator, or (2) terminate the Service Agreement by providing a one-year written notice to the Transmission Customer.

8.0 Third Party Rights

The Service Agreements shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation, or undertaking established therein to any third party as a beneficiary to such Service Agreement.

9.0 Entire Agreement

The Service Agreements, including the Tariff, together with the specifications under such Service Agreement and any completed scheduling forms shall constitute the entire understanding between the Transmission Provider and the Transmission Customer with respect to Transmission Service thereunder.

10.0 Power Supply Obligations

The Transmission Provider shall not be obligated to supply capacity and energy from its own sources or from its purchases from other neighboring systems during Interruptions or Curtailments in the delivery by the Transmission Provider or delivery to the Transmission Provider by the Delivering Party of capacity and energy for Transmission Service hereunder, and nothing in the Service Agreement or in the Transmission Customer's agreements with others shall have the effect of making, nor shall anything in the Service Agreement or said agreements with others be construed to require the Transmission Provider to take any action which would make the Transmission Provider, directly or indirectly, a source of power supply to the Transmission Customer, to any Delivering Party or Receiving Party, or to any ultimate recipient other than through the provision of Operating Reserve Service and emergency power.

11.0 Federal Law

Performance under the Tariff and Service Agreement shall be governed by applicable Federal law.

12.0 Continuing Obligations

The applicable provisions of the Service Agreement will continue in effect after termination of the Service Agreement to the extent necessary to provide for final billing, billing adjustments and payments, and with respect to liability and indemnification from acts or events that occurred while this Service Agreement was in effect.

13.0 Net Billing

Payments due the Transmission Provider by a Transmission Customer may, at the Transmission Provider's discretion, be offset against payments due the Transmission Customer by the Transmission Provider for the use of transmission facilities, operation and maintenance of electric facilities, and other services. Net billing for the sale or exchange of electric capacity and energy will be as mutually agreed. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14.0 Bill Crediting

As agreed in the Service Agreement, payments due the Transmission Provider by a Transmission Customer shall be paid by a Transmission Customer to a third party when so directed by the Transmission Provider. Any third party designated to receive payment in lieu of the Transmission Provider, and the amount to be paid to that party, will be so identified in writing to a Transmission Customer with the monthly power bill. The payment to the third party shall be due and payable by the payment due date specified on the Transmission Provider's bill. When remitting payment to a designated third party, a Transmission Customer shall indicate that such payment is being made on behalf of the Transmission Provider. The Transmission Provider shall credit a Transmission Customer for the amount paid as if payment had been made directly to the Transmission Provider. All other payment provisions shall remain in full force and effect.

Attachment K

Transmission Provider Authorities And Obligations

Western Area Power Administration (Western) was established on December 21, 1977, pursuant to Section 302 of the Department of Energy (DOE) Organization Act, Public Law 95-91, dated August 4, 1977. Western's primary and long-standing mission is to market Federal power resources with emphasis on maintaining an efficient and reliable power system. Western is a partial requirements power supplier that markets and transmits Federal power resources in 15 Central and Western States encompassing a geographic area of 3.38 million-square-kilometers (1.3 million-square-miles). Western has four Customer Service Regional Offices and the Colorado River Storage Project Customer Service Center, each referred to in the Tariff as Regional Office. Western markets power and provides transmission service from various multi-purpose hydroelectric projects and one coal-fired power plant in Arizona. Western will sell transmission service using Federally owned or controlled facilities only to the extent that transmission capacity is available in excess of that needed to deliver Federal power.

Western is not a public utility under Sections 205 and 206 of the Federal Power Act and is not specifically subject to the requirements of the Federal Energy Regulatory Commission's (FERC or Commission) Final Orders 888 and 888-A. Western is a transmitting utility subject to Section 211 of the Federal Power Act as amended by the Energy Policy Act of 1992. The Department of Energy has issued a Power Marketing Administration Open Access Transmission Policy that supports the intent of the FERC Notice of Proposed Rulemaking for Open Access Transmission.

Western's Regional Offices reserved transmission capacity shall include capacity sufficient to deliver Federal power resources, including statutory and firm electric service and project use power. The Tariff is intended to provide for transmission of non-Federal power on the unused capacity of transmission facilities under the jurisdiction or control of each of Western's Regional Offices, as well as each Regional Office's use of those facilities for third party sales, in a manner consistent with the spirit and intent of FERC Orders 888 and 888–A.

By statute, Western markets Federal power resources to Federal Customers, defined for purposes of this Tariff to be the statutory and firm electric service customers and project use power users of the Federal government. Western's transmission system was built primarily to enable the delivery of Federal power to satisfy contractual obligations, which are generally only partial requirements. Western interprets the term, ''Native Load Customers'' as used under this Tariff to be analogous to and the closest equivalent of Western's Federal Customers. Western therefore will treat its Federal Customers in a manner analogous to the treatment of Native Load Customers by public utilities.

Western is committed to providing comparable open-access transmission service to all customers. However, nothing in this Tariff shall alter, amend or abridge the statutory or contractual obligations of Western to market and deliver Federal power resources to Federal Customers and to repay the Federal investment in such projects.

Western has prepared this Tariff and service agreements to provide transmission service comparable to that required of public utilities by FERC Orders 888 and 888–A, and to implement the spirit and intent of those Orders consistent with the DOE Policy. An entity desiring transmission service from Western must comply with the application procedures outlined herein. The review and approval requirements detailed herein will apply to all requesting parties.

Western will perform the necessary studies or assessments for evaluating requests for transmission service as set forth in the Tariff. Any facility construction or interconnection necessary to provide transmission service will be subject to Western's General Requirements for Interconnection which are available upon request.

It is Western's intent to provide Firm and Non-Firm Point-to-Point Transmission Service and Network Integration Transmission Service consistent with the Tariff. The specific terms and conditions for providing transmission service to a customer will be included in a Service Agreement. Operating Procedures, Available Transmission Capacity (ATC), and System Impact Methodology are defined in the Attachments. Western's rates are developed under a separate public process pursuant to applicable Federal law and regulations. Therefore, rates and charges for specific services will be set forth in the appropriate Regional rates schedules attached to each Service Agreement.

Based on a reasonable level of risk, Western has marketed the maximum practical amount of power from each of its projects, leaving little flexibility for provision of additional power services. Changes in water conditions frequently affect the ability of hydroelectric projects to meet obligations on a short term basis. The unique characteristics of the hydro resource, Western's marketing plans, and the limitations of the resource due to changing water conditions may limit Western's ability to provide generation-related services including ancillary services and redispatching using Federal hydro resources.

Colorado River Storage Project Customer Service Center

The Colorado River Storage Project Customer Service Center (CRSP CSC), located in Salt Lake City, Utah, markets power from three Federal multipurpose water development projects; the Colorado River Storage Project, the Collbran Project, and the Rio Grande Project, collectively called the Integrated Projects. The hydroelectric facilities associated with these projects include: Flaming Gorge and Fontelle powerplants on the Green River; Blue Mesa, Morrow Point, and Crystal powerplants on the Gunnison River; Upper and Lower Molina powerplants of the Collbran Project in Western Colorado; the largest of the CRSP facilities, Glen Canyon power plant on the Colorado River; and Elephant Butte power plant, part of the Rio Grande Project on the Rio Grande River in South Central New Mexico. The CRSP transmission system consists of high-voltage transmission lines and attendant facilities extending from Arizona, into New Mexico, through Colorado, and into portions of Utah and Wyoming. The CRSP CSC uses the CRSP transmission system to meet its commitments to its federal customers, point-to-point transmission customers, and exchange power contractors. The CRSP CSC must, therefore, reserve sufficient transmission capacity to meet these long-term obligations. The CRSP CSC also needs to reserve capacity in its transmission system to enable it to deliver power produced by the Integrated Projects hydroelectric powerplants during periods when flood control water releases produce greater than normal generation levels.

The CRSP office, located in Salt Lake City, is a member of the Western Regional Transmission Association and Southwest Regional Transmission Association and operates within the Western Systems Coordinating Council.

The CRSP CSC does not operate a control area and as such may be unable to provide some or all of the services under the Tariff from its Integrated Projects hydroelectric resources, including, but not limited to, ancillary services and Network Integration Transmission Service.

The CRSP CSC application processing fee will be $1,600.

Desert Southwest Region

The Desert Southwest Region (DSR) manages transmission facilities in the states of Arizona, California, and Nevada. These transmission facilities were constructed for the primary purpose of marketing power from the Navajo Project for the Central Arizona Project, Boulder Canyon Project and the Parker-Davis Project. The Pacific Northwest-Pacific Southwest Intertie Project (Intertie), in which the DSR has ownership rights and administers the southern portion, is a part of the DSR transmission facilities. Transmission facilities of the Parker-Davis Project and the Intertie Project are included in this Tariff. The DSR transmission facilities are integrated with transmission facilities of several non-Federal entities. DSR is a member of the Southwest Regional Transmission Association and the Western Regional Transmission Association and its system is operated in the Western Systems Coordinating Council, and adheres to their criteria. DSR manages a control area operations center in its Desert Southwest Regional Office. The DSR office and the control area operations both are located in Phoenix, Arizona.

The DSR application processing fee will be $1,700.

Rocky Mountain Region

The Rocky Mountain Region (RMR) manages transmission facilities in the states of Colorado, Wyoming, Nebraska, and Kansas which were constructed for the primary purpose of marketing power from the Pick-Sloan Missouri Basin Program—Western Division. The RMR office and control area operations center is located in Loveland, Colorado. The RMR is a member of the Western Regional Transmission Association and its system is operated in the Western Systems Coordinating Council.

For RMR, the rates for Point-to-Point and Network Integration Transmission Service charged pursuant to the Tariff will be calculated using the costs of the transmission facilities of the Pick-Sloan Missouri Basin Program—Western Division. The rates for the ancillary services will be calculated using the costs of the generation facilities of the Pick-Sloan Missouri Basin Program—Western Division and the Fryingpan—Arkansas Project.

The RMR application processing fee will be $1,600.

Sierra Nevada Region

The Sierra Nevada Customer Service Region (SNR), located in Folsom, California, manages the Central Valley Project (CVP) transmission facilities in the state of California. These facilities were constructed for the primary purpose of marketing power resources from the CVP. SNR also has ownership rights to capacity in two multi-party transmission systems, the Pacific Northwest-Pacific Southwest Intertie Project (Pacific AC Intertie), and the

California-Oregon Transmission Project (COTP). Congress authorized SNR's participation in the Pacific AC Intertie for the purpose of importing power from the Pacific Northwest. COTP rights were acquired pursuant to Public Law 98–630, primarily for the purpose of delivering power to the United States Department of Energy Laboratories (DOE Labs) and Federal Fish and Wildlife refuges. Long-term use of the Pacific AC Intertie and COTP by third parties is restricted under existing contracts. SNR is a member of the Western Regional Transmission Association regional transmission group and operates within the Western Systems Coordinating Council reliability council.

The SNR does not operate a control area and as such may be unable to provide some or all of the services under the Tariff, including but not limited to, ancillary services and Network Integration Transmission Service.

The SNR application processing fee will be $1,300.

Upper Great Plains Region

The Upper Great Plains Region (UGPR) manages transmission facilities in the states of Montana, North Dakota, South Dakota, Nebraska, Minnesota, and Iowa which were constructed for the primary purpose of marketing power from the Pick-Sloan Missouri Basin Program—Eastern Division. The UGPR office is located in Billings, Montana. The UGPR manages a control area operations center in Watertown, South Dakota. The eastern portion of the UGPR system is operated in the Mid-Continent Area Power Pool (MAPP) reliability council. The western portion of the system is operated in the Western Systems Coordinating Council.

The UGPR transmission facilities are integrated with the transmission facilities of Basin Electric Power Cooperative (Basin) and Heartland Consumers Power District (Heartland) such that transmission services are provided over an integrated transmission system. UGPR rates for Point-to-Point and Network Integration Transmission Service charged pursuant to the Tariff will be calculated using the costs of the transmission facilities of UGPR, Basin, and Heartland that are included in the Transmission System. This Transmission System is also called the Integrated System (IS) and the rates are identified as IS Rates. The integration of these facilities as the IS and the use of the IS rates have been approved by the Administrator of Western through December 19, 1997. The definition of the Transmission System and the rates for Point-To-Point and Network Integration Transmission Service may be subject to change upon conclusion of an Open Access Transmission Service rate development process conducted pursuant to applicable Federal Law and regulations.

Both Basin and Heartland also own generating facilities and must commit to deliver the output of those resources to their respective members. Basin and Heartland will therefore reserve sufficient capacity in their transmission facilities to deliver that output.

Any Transmission Customer taking service under these Guidelines shall be subject to a Stranded Cost Charge payable to either UGPR, Basin or Heartland if such service is used for the transmission of power or energy that replaces wholly or in part, power or energy supplied by Western, Basin or Heartland respectively.

The Stranded Cost Charge of Basin shall be applicable regardless of whether the transmission relates to power and/or energy that is purchased by or on behalf of a Generation and Transmission Cooperative member of Basin (G&T), a Distribution Cooperative member of Basin or G&T, or a retail customer of a Distribution Cooperative member of Basin or a G&T.

The Stranded Cost Charge of Heartland shall be applicable whether the transmission service relates to power and/or energy that is purchased by or on behalf of a municipal customer of Heartland or a retail customer of a municipal customer of Heartland.

Stranded costs will be recovered only from a Transmission Customer who obtains transmission service under access rights granted through the Transmission Provider's compliance tariff developed pursuant to FERC Final Orders 888 and 888–A and causes either UGPR, Basin or Heartland to incur stranded costs. Stranded costs will be recovered through the terms and conditions of a separate contract entered into either by UGPR and the Transmission Customer or Basin and the Transmission Customer or Heartland and the Transmission Customer.

The UGPR application processing fee will be $1,700.

[FR Doc. 97–25332 Filed 9–25–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5898–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for Iron and Steel Foundries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Request for Iron and Steel Foundries, EPA ICR Number 1809.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No 1809.01.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for Iron and Steel Foundries; EPA ICR No. 1809.01. This is a new collection.

Affected entities: Entities potentially affected by this action are iron and steel foundries, which are facilities primarily engaged in manufacturing iron and steel castings. The Standard Industrial Classification (SIC) codes for these facilities include 3321 (gray and ductile iron foundries), 3322 (malleable iron foundries), 3324 (steel investment foundries), and 3325 (steel foundries, not elsewhere classified).

Abstract: The EPA is charged under section 112 of the Clean Air Act (the Act) with developing national emission standards for listed hazardous air pollutants (HAP). Preliminary information indicates that there are major sources of HAP in the iron and steel foundry source categories. These categories were listed pursuant to section 112(c) of the Act on July 16, 1992, and section 112(d) of the Act requires the Administrator to promulgate regulations establishing emission standards for this source category. Standards must be promulgated by November 15, 2000. The responses to the survey are mandatory and are being collected under the authority of section 114 of the Act.

The Emission Standards Division (ESD) of the Office of Air Quality Planning and Standards plans to use the survey responses to develop legally defensible maximum achievable control technology (MACT) standards. The focus of the survey is on determinations of HAP emissions, emission controls, and control performance, which are critical elements in the development of technology-based standards. Other questions in the survey provide information that ESD will use to develop reasonable estimates of impacts associated with potential standards, including emission reductions, cost, and economic impacts.

Specifically, the information will be used by ESD to develop estimates of emissions of HAP, make determinations with respect to probable ''major'' sources, and develop MACT standards for both new and existing foundries. The data base compiled from the results will be used to make a determination of the MACT floor for existing sources based on the average emission limitation achieved by the best-performing 12 percent of sources. The results will also aid in identifying the best controlled sources for a determination of MACT for new foundries. In addition, the data base will be invaluable to make defensible estimates of the impacts of the standards, including emissions and emission reductions, costs of control options and their cost effectiveness, and economic impacts. Because many foundries meet the definition of small entities, the survey is necessary for EPA to meet the requirements of the Regulatory Flexibility Act of 1980 and the Small Business Regulatory Enforcement Fairness Act of 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 3, 1997 (62 FR 30322); three comments were received. All three commenters supported the need for the survey to gather information to develop MACT standards and recommended an expeditious distribution to allow EPA to meet statutory deadlines.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Iron and steel foundries.

Estimated Number of Respondents: 742.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 5,681 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1809.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: September 23, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–25650 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Protection of Stratospheric Ozone: Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Protection of Stratospheric Ozone: Labeling (OMB control number 2060–0342 expiring September 30, 1997). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1757.02.

SUPPLEMENTARY INFORMATION:

Title: Protection of Stratospheric Ozone: Labeling (OMB Control No. 2060–0342; EPA ICR No. 1757.02.) expiring 09/30/97. This is a request for extension of a currently approved collection.

Abstract: The regulations in 40 CFR 82.100 through 82.124 require all products containing or made with a class I substance and all containers of class I and class II ozone-depleting substances to have an applicable warning label. The disclosure, in the form of labeling, will be used by consumers to make product choices based on environmental information and consumer preferences. These requirements are mandatory as authorized under section 611 of the Clean Air Act Amendments of 1990.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/26/97 (62 FR 8724); no comments were received.

Burden Statement: The annual public burden for disclosure of this information is estimated to average 63 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and

providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, distributors, retailers, importers, and recyclers/reclaimers of class I and class II ozone-depleting substances.

Estimated Number of Respondents: 48.

Estimated Total Annual Hour Burden: 3024 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1757.02 and OMB Control No. 2060–0342 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 23, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–25651 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5484–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements filed September 15, 1997 through September 19, 1997, pursuant to 40 CFR 1506.9.

EIS No. 970365, Draft EIS, FHW, NM, New Mexico Highway 126 (NM–126), Cuba-La Cueva Road (also Known as Forest Highway 12) Improvement, COE Section 404 Permit and NPDES Permit, Sandoval and Rio Arriba Counties, NM, Due: November 14, 1997, Contact: Richard J. Cushing (303) 969–5910.

EIS No. 970366, Final EIS, AFS, AK, Swan Lake-Lake Tyee Intertie Project, Electrical Transmission Line and Associated Facilities Construction and Operation, Northwestern Portion of Revillagigedo Island from Upper Carroll Inlet to Behm Canal and the Northeastern Portion of Cleveland Peninsula from Spacious Bay to Bradfield Canal, Special-Use-Permit Issuance, Tongass, AK, Due: October 27, 1997, Contact: Bill Angelus (907) 225–2148.

EIS No. 970367, Final EIS, BLM, CA, Soledad Mountain Open Pit Leap Leach Gold Mine Project, Construction and Operation, Plan-of-Operations Approval, Mojave, Kern County, CA, Due: October 27, 1997, Contact: Ahmed Mohsen (760) 384–5421.

EIS No. 970368, Final EIS, BLM, NM, Little Rock Open-Pit Mine Project, Construction and Operation, Plan of Operations Approval, and Several Permits Issuance, Grant County, NM, Due: October 27, 1997, Contact: Juan Padilla (505) 525–4376.

EIS No. 970369, Draft EIS, AFS, MT, Wayup Mine/Fourth of July Road Access, Right-of-Way Grant, Kootenai National Forest, Libby Ranger District, Lincoln County, MT, Due: November 10, 1997, Contact: Jon Jeresek (406) 293–7773.

EIS No. 970370, Draft EIS, AFS, MT, Meadow Timber Sales, Implementation, Timber Harvesting, Road Construction and Prescribed Burning, Fortine Ranger District, Kootenai National Forest, Lincoln County, MT, Due: November 25, 1997, Contact: Joleen Dunham (406) 882–4451.

EIS No. 970371, Final EIS, USN, PR, VA, Relocatable over the Horizon Radar (ROTHR) System Construction and Operation, New and Updated Information on Fort Allen as Potential Site, Commonwealth of Puerto Rico and Chesapeake, VA, Due: October 27, 1997, Contact: Ms. Linda Blount (757) 322–4892.

Dated: September 23, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–25638 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–5484–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 25, 1997 through August 29, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–FRC–E02006–MS Rating EC2, Destin Natural Gas Pipeline Project, Construction and Operation, Six Major Interstate Pipelines in the Gulf of Mexico, Southern Natural Gas, COE Section 10 and 404 Permits, Right-of-Way and Special-Use Permits.

Summary: EPA expressed concerns over the loss of forested wetlands, the need for numerous water body crossings, the need to address potential environmental justice concerns, and the need for documentation of annual nitrogen oxide emissions of the proposed new compressors.

ERP No. D–MMS–E02009–00 Rating EC2, Central Planning Area, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 169, 172, 175, 178 and 182, Lease Offering, Offshore Marine Environment and Coastal Counties/Parishes of AL, MS, LA and TX.

Summary: EPA expressed concerns regarding inadequate protection of benthic marine habitats and MMS allowing pipeline projects to be reviewed independent of production projects. EPA preferrers the Alternative B.

ERP No. DS–COE–K67020–CA Rating EO2, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, New and Updated Information, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healdsburg, Sonoma County, CA.

Summary: EPA expressed environmental objections with the proposed Project because it appears to be the alternative which is most damaging to the aquatic environment, especially in terms of adverse impacts to riffle-pool complexes and anadromous fisheries, including Federally-listed

species. EPA was also concerned that the SDEIS did not propose mitigation for direct and indirect impacts to Section 404 regulated resources, including wetlands and riffle-pool complexes, over the life of the project.

ERP No. DS–NOA–K90025–CA Rating LO, Monterey Bay National Marine Sanctuary Management Plan, Updated Information, To Amend the Designation Document and Regulations to Allow Jade Collecting in the Sanctuary, San Mateo, Santa Cruz and Monterey Counties, CA.

Summary: EPA had no objection to the action as proposed.

Final EISs

ERP No. F–COE–E30037–FL, Brevard County Shore Protection Study, Implementation, Beach Restoration Project, Brevard County, FL.

Summary: EPA expressed environmental concerns that given the magnitude of the coastal erosion rates in Brevard County, it is unclear whether the proposed project would have long-term benefits despite the adverse environmental impacts to the nearshore environment.

ERP No. F–COE–E30038–FL, Coast of Florida Erosion and Storm Effects Study Region III, Construction, Operation and Maintenance, Shore Protection Project, Palm Beach, Broward and Dade Counties, FL.

Summary: EPA had no additional comments regarding the Final EIS.

ERP No. F–FAA–E51044–NC, Initial Development of the North Carolina Global TransPark (NCGTP) Complex, Implementation, Airport Layout Plan Approval, COE Section 404 Permit, Kinston, Lenoir County, NC.

Summary: EPA's review found that the document addressed most environmental concerns adequately. A wetland mitigation proposal was not finalized, as had been requested.

ERP No. F–FHW–C40135–NY, I–287 Cross Westchester Expressway (CWE) Transportation Improvements, New York State Thruway Route 303 to Route 120, Funding, Right-of-Way Acquisition, COE Section 10 and 404 Permits, Rockland and Westchester Counties, NY.

Summary: EPA had concluded that the proposed project would not result in significant adverse environmental impacts and had no objections to its implementation.

ERP No. F–FHW–K40197–CA, East Sonora Bypass Corridor Construction, CA–108 from Post Mile M1.8 to Post Mile R6.9 near Sonora, Funding and Right-of-Way, City of Sonora, Tuolumne County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L61213–00, Nez Perce National Historical Park and Big Hole National Battlefield General Management Plan, Implementation, Asotin and Okanogan Counties, WA; Wallowa County, OR; Idaho, Lewis, Nez Perce, Clearwater and Clank Counties, ID; and Blaine, Yellowstone and Beaverhead Counties, MT.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–SCS–G36146–OK, Middle Deep Red Run Creek Watershed Plan, Implementation, Funding and Possible COE Section 404 Permit, Central Rolling Red Plains, Tillman, Comanche and Kiowa Counties, OK.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–G11032–TX, Reese Air Force Base (AFB) Disposal and Reuse, Implementation, NPDES Permit and COE Section 404 Permit, Lubbock and Terry Counties, TX.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: September 23, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–25639 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5898–8]

Clean Air Act Advisory Committee

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice

Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday November 7, 1997, from 8:30 a.m. to 3:00 p.m. at Sheraton Grand Hotel, 4860 W. Kennedy Blvd., Tampa, Florida 33609. Seating will be available on a first come, first served basis. The Permits/NSR/Toxics Integration Subcommittee, the Economic Incentives and Regulatory Innovations Subcommittee, the Linking Transportation, Land Use and Air Quality Concerns Subcommittee will conduct meetings on Thursday November 6, 1997, from approximately 8:30 a.m. to 10:30 a.m. at the same hotel.

Inspection of Committee Documents

The committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available for contacting Committee DFO Paul Rasmussen at (202) 260–6877.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the CAAAC, please contact Paul Rasmussen, Officer of Air and Radiation, US EPA (202) 260–6877, Fax (202) 260–4185 or by mail at US EPA, Officer of Air and Radiation (Mail Code 6102), Washington, D.C. 20460. If you would like to receive an agenda for the CAAAC meeting, please leave your fax number on Mr. Rasmussen's voice mail and it will be forwarded to you.

Dated: September 18, 1997.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–25652 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00508; FRL–5748–4]

State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation (SFIREG) Water Quality and Pesticide Disposal Working Committee will hold a 2-day meeting, October 6, and 7, 1997. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal

will meet on Monday, October 6, 1997, from 8:30 a.m. to 5:00 p.m. Tuesday, October 7, 1997, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: the National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA, 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: (703) 305–5306; (703) 308–1850 (fax); e-mail: Lyon.elaine.@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Surface Water - storm water retention ponds and sanitary waste water treatment facilities.
2. Lysimeters technology.
3. Update on state management plan rule.
4. Update on restricted use product rule.
5. Measures of success.
6. Rinse water reuse.
7. Reports from committee members.
8. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: September 22, 1997.

Jay Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 97–25757 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–760; FRL–5740–2]

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–760, must be received on or before October 27, 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: Indira Gairola, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. W-57, 4th floor, CS #1, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, 703–308–8371, e-mail: gairola.indira@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–760] (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–760] 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 16, 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.

AgrEvo

PP 7F4850

EPA has received a pesticide petition (PP 7F4850) from AgrEvo, 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 herbicide safener Mefenpyr-diethyl (HOE 107892) on wheat and barley

commodities. 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 fate of mefenpyr-diethyl has been determined in young barley plants and the nature of the residue is understood. Residues of concern are mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline metabolites, all of which are detected and quantified by the analytical method described above.

Residue trials have been conducted in the United States in 1995 and 1996. When applied as a single application at a rate of 0.089 lb. of safener per acre, combined residues in wheat or barley grain did not exceed 0.04 ppm. In wheat or barley straw, combined residues did not exceed 0.67 ppm, and in wheat or barley hay combined residues did not exceed 0.35 ppm. In these same trials, combined residues did not exceed 0.55 ppm in wheat forage. Thus, the proposed tolerances of 0.05 ppm in barley and wheat grain, 0.75 ppm in wheat straw and forage, 0.5 ppm in wheat and barley hay, and 1.0 ppm in barley straw are adequate.

2. *Analytical method*. A practical analytical method utilizing gas chromatography and a mass selective detector is available for detecting and measuring levels of mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline containing metabolites in wheat grain and straw. The limit of quantitation (LOQ) is 0.01 mg/kg (ppm) in wheat and barley grain, 0.05 mg/kg (ppm) in wheat and barley straw and wheat hay, and 0.1 ppm in wheat forage.

3. *Magnitude of residues*. The fate of mefenpyr-diethyl has been determined in young barley plants and the nature of the residue is understood. Residues of concern are mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline metabolites, all of which are detected and quantified by the analytical method described above.

Residue trials have been conducted in the United States in 1995 and 1996. When applied as a single application at a rate of 0.089 lb. of safener per acre, combined residues in wheat or barley grain did not exceed 0.04 ppm. In wheat or barley straw, combined residues did not exceed 0.67 ppm, and in wheat or barley hay combined residues did not exceed 0.35 ppm. In these same trials, combined residues did not exceed 0.55 ppm in wheat forage. Thus, the proposed tolerances of 0.05 ppm in barley and wheat grain, 0.75 ppm in wheat straw and forage, 0.5 ppm in wheat and barley hay, and 1.0 ppm in barley straw are adequate.

The metabolism of mefenpyr-diethyl in poultry is adequately understood. Laying hens were fed the compound at a level approximately 5–times the worst case dietary burden for 14–days. Low levels of residues of mefenpyr-diethyl were detected in fat, and low levels of residues of mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in liver and eggs.

The metabolism of mefenpyr-diethyl in ruminants is also adequately understood. A lactating goat was dosed with the compound at a level approximately 56–times the worst case dietary burden for 7–days. Low levels of residues of mefenpyr-diethyl and/or its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in liver and eggs.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} of mefenpyr-diethyl was greater than 5,000 mg/kg in both rats and mice. The acute rat dermal LD_{50} was greater than 4,000 mg/kg, and the acute rat inhalation LC_{50} (4-hour) was greater than 1.32 mg/l. Mefenpyr-diethyl was slightly irritating to the eyes of rabbits. It was not irritating to rabbit skin in a standard dermal irritation study but was a weak dermal sensitizer in a guinea pig maximization study. Evidence of photoirritation, but no photosensitization, was observed in other studies with guinea pigs. Based on these results, mefenpyr-diethyl is expected to be classified as TOXICITY CATEGORY IV for acute oral toxicity and skin irritation, and TOXICITY CATEGORY III for acute dermal and inhalation toxicity, and eye irritation.

2. *Genotoxicty*. No evidence of genotoxicity was observed in a battery of studies including *Salmonella* and *E. coli* bacterial gene mutation assays, an HGPRT gene mutation assay in Chinese hamster cells, a mouse micronucleus assay, an *in vitro* chromosome aberration assay, and an *in vitro* unscheduled DNA synthesis assay.

3. *Reproductive and developmental toxicity*. Two rat developmental toxicity studies have been conducted with mefenpyr-diethyl. In the first study, Wistar rats were administered mefenpyr-diethyl by gavage at dose levels of 0 and 1,000 mg/kg body weight/day on gestation days 7 to 16. The fetuses were delivered by cesarean section on gestation day 21 and evaluated for external, visceral and/or skeletal anomalies. No maternal or developmental effects were noted in this study. Thus, the NOEL for maternal and developmental effects was considered to be 1,000 mg/kg bodyweight. In the second study, Wistar rats were again administered mefenpyr-diethyl by gavage at dose levels of 0 and 1,000 mg/kg body weight/day on gestation days 7 to 16, but the dams were then allowed to deliver normally and the offspring were evaluated for up to 44–days post-partum. No maternal effects were observed in this study. There was a marginal decrease in the body weight of the offspring at birth and during lactation but no other changes in physical, functional, or behavioral endpoints were observed.

In a rabbit developmental toxicity study, mefenpyr-diethyl was administered by gavage to Himalayan rabbits at dose levels of 0, 40, 100, and 250 mg/kg body weight/day on gestation days 6 to 18. The highest dose tested was toxic to both dams and embryos, as evidenced by a decreased food and water consumption, decreased maternal body weights, abortions, and increased incidences of intrauterine death. No morphological effects on the offspring were noted. The NOEL for maternal and embryonic toxicity was considered to be 100 mg/kg body weight.

A 2–generation reproduction study was conducted in Wistar rats fed diet containing mefenpyr-diethyl at dietary concentrations of 0, 200, 1,000, and 5,000 ppm for 70–days then continuously through successive generations. Effects observed at 5,000 ppm consisted of decreased food consumption, decreased body weight gain, increased spleen weights and increased splenic hematopoiesis in the parental animals, and decreased body weights in the pups during lactation. No effects on reproductive parameters were noted. Thus, the overall study NOEL for both parents and the progeny was considered to be 1,000 ppm, equivalent to a mean daily substance intake of 75 and 99 mg/kg bodyweight for the males and females, respectively.

4. *Subchronic toxicity*. In a 90–day feeding study, mefenpyr-diethyl was administered to Wistar rats at concentrations of 0, 100, 500, 2,500, and 7,500 ppm in the diet. Based on slight reduction in body weight at 7,500 ppm and minimal to slight anemia at 2,500 and 7,500 ppm, the NOEL was considered to be 500 ppm, equivalent to

a mean daily test substance intake of 42 mg/kg body weight.

In a 90–day feeding study in beagle dogs, mefenpyr-diethyl was administered in the diet at concentrations of 0, 400, 2,000, and 10,000 ppm. Effects observed at 10,000 ppm included decreased food consumption and body weight gain, increased liver weights, anemia, and alterations in several clinical chemistry parameters. There were no histopathological changes. Increased liver weight and increases in two serum enzymes were noted at 2,000 ppm. Thus, the NOEL was considered to be 400 ppm, equivalent to a mean daily test substance intake of 15 mg/kg body weight.

In a 90–day feeding study in NMRI mice, mefenpyr-diethyl was administered in the diet at concentrations of 0, 100, 500, 2,500, and 7,500 ppm. Effects noted at 7,500 ppm included decreased food consumption and body weight gain, slight anemia, alterations in several hematology and clinical chemistry parameters, slightly increased spleen weights, and markedly increased liver weights. Histopathological evaluation revealed hepatocellular hypertrophy in the liver, and increased hemosiderin deposits and compensatory hematopoiesis in the spleen. Effects noted at 2,500 ppm included decreased weight gain, minor alterations in several clinical pathology parameters, slight increases in liver weights, and hepatocellular hypertrophy. The NOEL for this study was considered to be 500 ppm, equivalent to a mean daily substance intake of 89 mg/kg body weight.

In a subchronic dermal toxicity study, mefenpyr-diethyl was applied to Wistar rats at dose levels of 0, 100, 300, and 1,000 mg/kg body weight for six hours per day, 5–days a week, for a total of 21–days over a period of 30–days. Based on slight anemia observed among the females at 1,000 mg/kg body weight, the NOEL was considered to be 300 mg/kg bodyweight.

5. *Chronic toxicity*. A 2–year feeding chronic toxicity/carcinogenicity study was conducted in Wistar rats with mefenpyr-diethyl at dietary concentrations of 0, 40, 200, 1,000, and 5,000 ppm. No evidence of carcinogenicity was observed in this study. Based on slight reductions in female body weights and slight anemia in both sexes at 5,000 ppm, the NOEL was considered to be 1,000 ppm, equivalent to a mean daily substance intake of 48 and 60 mg/kg bodyweight in males and females, respectively.

A 2–year feeding chronic toxicity/carcinogenicity study was conducted in NMRI mice with mefenpyr-diethyl at dietary concentrations of 0, 20, 100, 500, and 2,500 ppm. No evidence of carcinogenicity was observed in this study. Slight but consistently reduced body weights and slight increases in liver weight were noted in male mice at 2,500 ppm. Hepatocellular hypertrophy was noted in both sexes at 2,500 ppm, in male mice only at 500 ppm, and in a few males at 100 ppm. Hematology, serum biochemistry and urinalysis parameters were unaffected. Because of the low incidence and severity of the hepatocellular hypertrophy at 100 ppm, the NOAEL for this study was considered to be 500 ppm, equivalent to a mean daily intake of 71 mg/kg body weight.

A 1–year feeding study was conducted in beagle dogs with mefenpyr-diethyl at dietary concentrations of 0, 60, 300, 1,500, and 7,500 ppm. There was a slight decrease in food consumption in males at 7,500 ppm, but body weights were unaffected. Other effects at this dose level consisted of slight anemia, a slight increase in platelet count, alterations in several clinical chemistry parameters, moderately to markedly increased liver weights, slightly increased thyroid weights, slightly decreased prostate weights, and minimal intrahepatic cholestasis. The NOEL for this study was considered to be 1,500 ppm, equivalent to a mean daily test substance intake of 55 mg/kg body weight.

6. *Animal metabolism*. The metabolism of mefenpyr-diethyl in poultry is adequately understood. Laying hens were fed the compound at a level approximately 5–times the worst case dietary burden for 14–days. Low levels of residues of mefenpyr-diethyl were detected in fat, and low levels of residues of mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in liver and eggs.

The metabolism of mefenpyr-diethyl in ruminants is also adequately understood. A lactating goat was dosed with the compound at a level approximately 56–times the worst case dietary burden for 7–days. Low levels of residues of mefenpyr-diethyl and/or its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in kidney, liver, fat, and milk.

Based on the results observed in these metabolism studies, secondary residues in animal commodities are not expected to be of concern in terms of dietary risk to consumers.

C. Aggregate Exposure

Mefenpyr-diethyl is intended for use on agricultural crops as a herbicide safening agent. As such, non-occupational exposures to mefenpyr-diethyl would be limited to potential exposures via residues in food or water. There are no acute toxicity concerns with mefenpyr-diethyl. Therefore, only chronic exposures are being addressed here.

Dietary exposure—1. *Food*. Potential dietary exposures from food under the proposed tolerances were estimated using the Exposure 1 software system (TAS, Inc.) and the 1977–78 USDA consumption data. For the purposes of this risk assessment, AgrEvo USA Company has made the overly conservative assumption that 100% of all wheat and barley commodities will contain residues of mefenpyr-diethyl and that all of those residues will be at the proposed tolerance level. Further, default concentration factors are assumed for processed wheat and barley commodities. Thus, this estimate should result in a gross overestimation of actual human exposure. allowing administration. Metabolite profiles were similar following oral and dermal exposures, with the route of metabolism being hydrolysis of the two carboxylic acid ester groups, and decarboxylation of one of the carboxylic acid groups resulting in the aromatization of the heterocyclic ring.

2. *Drinking water*. The potential for mefenpyr-diethyl to leach into groundwater has been assessed in various laboratory studies. These experiments clearly demonstrate that mefenpyr-diethyl is rapidly degraded in the environment, chiefly via metabolism in biologically active soils. Aerobic degradation half-lives of 3–days or less were observed under a wide range of experimental conditions. Clear degradation of metabolites was also observed, with soil photolysis accelerating the process. Mefenpyr-diethyl was stable to hydrolysis under acid conditions, but was rapidly degraded at mildly alkaline pH vales. Rapid photodegradation was observed under those aqueous conditions where mefenpyr-diethyl is stable to hydrolysis. The compound sorbed readily to soil organic matter, therefore, leaching is not of concern. Based on these environmental fate data and the anticipated conditions of use, the potential for movement of mefenpyr-diethyl is considered to be low. As such, the potential contribution of any residues of the compound in water to the total dietary intake of mefenpyr-diethyl will be negligible.

D. Cumulative Effects

The potential for mefenpyr-diethyl to leach into groundwater has been assessed in various laboratory studies. These experiments clearly demonstrate that mefenpyr-diethyl is rapidly degraded in the environment, chiefly via metabolism in biologically active soils. Aerobic degradation half-lives of 3– days or less were observed under a wide range of experimental conditions. Clear degradation of metabolites was also observed, with soil photolysis accelerating the process. Mefenpyr-diethyl was stable to hydrolysis under acid conditions, but was rapidly degraded at mildly alkaline pH vales. Rapid photodegradation was observed under those aqueous conditions where mefenpyr-diethyl is stable to hydrolysis. The compound sorbed readily to soil organic matter, therefore leaching is not of concern. Based on these environmental fate data and the anticipated conditions of use, the potential for movement of mefenpyr-diethyl is considered to be low. As such, the potential contribution of any residues of the compound in water to the total dietary intake of mefenpyr-diethyl will be negligible.

E. Safety Determination

1. *U.S. population*. A Reference Dose value (RfD) of 0.48 mg/kg body weight/day is appropriate for chronic dietary risk assessments of mefenpyr-diethyl. This RfD is based on the 2–year rat chronic toxicity study in which the NOEL was 1,000 ppm, equivalent to 48 mg/kg body weight for males, and a 100–fold safety factor to account for interspecies extrapolation and intraspecies variation.

Under the conservative (worst-case) dietary exposure assumption described above in paragraph D.1., chronic dietary exposures will utilize only 0.11% of the RfD for the general U.S. population. There is generally no concern for exposures below 100% of the RfD since it represents the level at or below which no appreciable risks to human health is posed. Thus, there is reasonable certainty that no harm will result to the U.S. population in general from aggregate exposure to mefenpyr-diethyl residues.

2. *Infants and children*. Data from rat and rabbit development 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 pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide.

FFDCA Section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre- and post-natal toxicity or incompleteness of the database. However, the toxicology database for mefenpyr-diethyl regarding potential pre- and post-natal effects in offspring is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns. No reproductive effects were noted in any of the studies and the NOEL's for the parents and offspring were the same in three of the four studies. A marginal decrease in pup weights was noted at a non-maternally toxic dose level in the second rat developmental toxicity study, but only at a dose level of 1,000 mg/kg/day. Thus, there does not appear to be any significant difference in sensitivity to mefenpyr-diethyl between adults and offspring. Furthermore, the proposed RfD of 0.48 mg/kg/day, which is based on a 48 mg/kg/day NOEL from the 2–year rat feeding study, already provides for a safety factor of 208 relative to the 100 mg/kg/day developmental NOEL from the rabbit developmental toxicity study. Thus, the RfD of 0.48 mg/kg/day is considered to be appropriate for assessing potential risks to infants and children and an additional uncertainty factor is not warranted.

Using the conservative assumptions described above, aggregate exposure to mefenpyr-diethyl is expected to utilize 0.25% of the reference dose in the population subgroups children 1–6 years old and 0.18% of the reference dose in the population subgroup children 7–12 years old. These numbers would, in all likelihood, be significantly lower if an adjustment for actual percent of crop treated was considered.

F. International Tolerances

Italy has established an MRL (maximum residue limit) of 0.05 ppm in wheat grain for residues of mefenpyr-diethyl and metabolites.

[FR Doc. 97–25656 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–2]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding ProSoCo, Inc., Kansas City, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding ProSoCo, Inc., Kansas City, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment to the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 132(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On August 6, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of ProSoCo, Inc., Kansas City, Kansas, EPCRA Docket No. VII–97E–44 and CWA Docket No. VII–97–W–0017.

The Complaint proposes a penalty of Ten Thousand Dollars ($10,000) under the Clean Water Act for the release and discharge of a hazardous substance into waters of the United States in violation of section 103(a) of CERCLA and section 311(b)(3) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the

proposed penalty assessment, or otherwise participate in the proceeding should contact Vanessa Cobbs, Regional Hearing Clerk, at (913) 551–7630.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by ProSoCo, Inc., is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: September 17, 1997.

William A. Spratlin,

Acting Regional Director.

[FR Doc. 97–25648 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–37]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Morton International, Inc., Hutchinson, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Morton International, Inc., Hutchinson, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On March 31, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of, Morton International, Inc., Hutchinson, Kansas; EPCRA Docket No. VII–96E–218 and CWA Docket No. VII–97–W–0008.

The Complaint proposes a penalty of Six Thousand Nine Hundred Dollars ($6,900) for the discharge of a hazardous substance in violation of section 11(b)(3) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Vanessa Cobbs, Regional Hearing Clerk at (913) 551–7630.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Morton International, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: September 17, 1997.

William A. Spratlin,

Regional Administrator.

[FR Doc. 97–25649 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:46 a.m. on Tuesday, September 23, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a personnel matter and other matters which relate to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Nicolas P. Retsinas (Acting Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: September 23, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–25780 Filed 9–24–97; 2:37 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 10, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bradley Investments, L.L.L.P., Golden, Colorado, Leo N. Bradley, Golden, Colorado, Susan Q. Bradley, Denver, Colorado, and Jeffrey N.

Bradley, Denver, Colorado; to acquire shares of Evergreen Bancorporation, Evergreen, Colorado, and thereby indirectly acquire Evergreen National Bank, Evergreen, Colorado.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25567 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Banks or Bank Holding Companies, Correction

This notice corrects a notice (FR Doc. 97-24579) published on page 48662 of the issue for Tuesday, September 16, 1997.

Under the Federal Reserve Bank of Chicago heading, the entry for James Randel Smith, Auburn, Nebreska, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. James Randel Smith, Auburn, Nebraska, to acquire 33.3 percent; Jerry A. Jobe, Tabor, Iowa, to retain 33.3 percent; and Grant T. Schaaf, Randolph, Iowa, to retain 33.3 percent, of the voting shares of Tabor Enterprises, Inc., Tabor, Iowa, and thereby indirectly acquire First State Bank, Tabor, Iowa.

Comments on this application must be received by October 1, 1997.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25570 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Penns Wood Bancorp, Inc., Williamsport, Pennsylvania; to acquire 10 percent of the voting shares of Columbia Financial Corporation, Bloomsburg, Pennsylvania, and thereby indirectly acquire First Columbia Bank & Trust Company, Bloomsburg, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Horizon Bancorp of South Arkansas, Inc., Magnolia, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Horizon Bank of Columbia County, Magnolia, Arkansas.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. The First National Bank at St. James ESOP, St. James, Minnesota; to acquire an additional 2.3 percent of the voting shares of The First National Agency at St. James, St. James, Minnesota, and thereby indirectly acquire The First National Bank at St. James, St. James, Minnesota. Applicant is also applying to retroactively acquire .55 percent of the voting shares of The First National Agency at St. James.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Community Bankshares, Inc., Denver, Colorado; to acquire 90 percent of the voting shares of Dove Creek State Bank, Dove Creek, Colorado.

2. Trustbank Financial Corporation, Denver, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Trust Bank of Colorado, Denver, Colorado.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25569 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Preimer Bancorp, Inc., Doylestown, Pennsylvnia; to become a bank holding company by acquiring 100 percent of the voting shares of Preimer Bank, Doylestown, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Builders Financial Corporation, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Builders Bank, Chicago, Illinois (in organization).

2. Washington Bancorp, Washington, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Rubio Savings Bank of Brighton, Brighton, Iowa. Applicant also has applied to acquire Washington Federal Savings Bank, and thereby operate a savings association, pursuant to § 225.28(b)(11) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Roseau Realty Co., Inc., Roseau, Minnesota; to become a bank holding company by acquiring 74.9 percent of the voting shares of Citizens State Bank of Roseau, Roseau, Minnesota.

In connection with this application, Applicant also has applied to engage in general insurance agency activities in a town with a population less than 5,000, pursuant to § 225.28(b)(11)(iii)(A) of the Board's Regulation Y.

2. Winter-Park Bancshares, Inc., Cameron, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of, and thereby merge with, Owen-Curtiss Financial Corporation, Rice Lake, Wisconsin, which has applied to become a bank holding company, and thereby indirectly acquire Brill Bancshares, Inc., Rice Lake, Wisconsin, and Brill State Bank, Brill, Wisconsin.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. CSB Bancshares, Inc., Ellsworth, Kansas; to acquire 5.92 percent of the voting shares of Wilson Bancshares, Inc., Wilson, Kansas, and thereby indirectly acquire Wilson State Bank, Wilson, Kansas.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. SWB Bancshares, Inc., Fort Worth, Texas, and SW Financial, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Southwest Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, September 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25659 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Mutual Bancorp of the Berkshires, Inc., Pittsfield, Massachusetts; to acquire Trust Company of the Berkshires, N.A., Pittsfield, Massachusetts, and there engage in performing trust company functions, pursuant to § 225.28(b)(5) of the Board's Regulation Y.

2. Mutual Bancorp of the Berkshires, Inc., Pittsfield, Massachusetts; to acquire Pittsfield Central Development Company, LLC, Pittsfield, Massachusetts, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National Commerce Bancorporation, Memphis, Tennessee; to engage *de novo* through its subsidiary, First Market Bank, FSB, Memphis, Tennessee, in the operation of a federal savings bank, pursuant to § 225.28(b)(4) of the Board's Regulation Y. Notificant will acquire at least 49 percent of FSB and will operate FSB with a co-venturer, Ukrop's Super Markets, Inc., Richmond, Virginia. Comments must be received by October 20, 1997.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25568 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Bancorp, Inc., Boston, Massachusetts; to acquire Westfield Capital Management Company, Inc., Boston, Massachusetts, through a *de novo* subsidiary, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25660 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Refugee Resettlement Program Estimates: CMA, ORR–1.

OMB No.: 0970–0030.

Description: ORR reimburses, to the extent of available appropriations, certain non-Federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses in the administration of the Refugee Resettlement Program. ORR needs sound State estimates of likely expenditures for refugee cash, medical, and administrative (CMA) expenditures so that it can anticipate Federal costs in upcoming quarters. If Federal costs are anticipated to exceed budget allocations, ORR must take steps to reduce Federal expenses, such as limiting the number of months of eligibility for Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA).

To meet the need for reliable State estimates of anticipated expenses, ORR has developed a single-page form in which States estimate the average number of recipients for each category of assistance, the average unit cost over the next 12 months, and the expense for the overall administration of the program. This form, the ORR–1 (formerly Form FSA–601) must be submitted prior to the beginning of each Federal fiscal year. Without this information, ORR would be out of compliance with the intent of its legislation and otherwise unable to estimate program costs adequately.

In addition, the ORR–1 serves as the State's application for reimbursement of its CMA expenses. Submission of this form is thus required by section 412(a)(4) of the Immigration and Nationality Act which provides that ''no grant or contract may be awarded under this section unless an appropriate proposal and application * * * are submitted to, and approved by, the appropriate administering official.''

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–1	24	1	.5	24

Estimated Total Annual Burden Hours: 24

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Service, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 22, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–25603 Filed 9–25–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F–0493]

Gerard T. O'Brien; Denial Without Prejudice of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying a petition (FAP 7A4530) proposing that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. The petitioner did not provide sufficient data and information for the agency to conclude that the proposed use of the food additive is safe, or that it will have its intended technical effect.

DATES: Written objections and request for a hearing by October 27, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3078.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on January 2, 1997 (62 FR 101), FDA announced that a food additive petition (FAP 7A4530) had been filed by Gerard T. O'Brien, 2162 Skyline Dr., Gainesville, GA 30501. The petitioner requested that FDA amend the food additive regulations to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry.

In acting on any food additive petition, FDA must determine whether the proposed use of the additive under the conditions of use to be specified in the regulation is safe (section 409(c)(3)(A) of the Federal Food, Drug,

and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A))). The burden is on the petitioner to submit to FDA data and information that are adequate to provide the basis for such a determination. The data and information must include all studies, whether favorable or adverse, relevant to the safety of the food additive and relevant to whether the food additive will achieve its intended physical or technical effect.

FAP 7A4530 was submitted to the agency on September 24, 1987, as FAP 7A4045. The agency found that the petition did not meet the minimum requirements for filing in accordance with § 171.1(c) (21 CFR 171.1(c)). Despite FDA requests to petitioner for data and information to correct the deficiencies (Refs. 1, 2, and 3), the petitioner failed to submit such data and information to demonstrate that the food additive will achieve its intended technical effect, and that it is safe for the intended use. Specifically, the petitioner failed to provide data and information to demonstrate that the hydrogen peroxide and sodium bicarbonate mixture would significantly reduce pathogenic bacterial contamination on the surface of fresh poultry, e.g. *Salmonella*, *Escherichia coli*, and psychrophiles. In addition, the petitioner failed to provide data and information on whether oxidative effects of hydrogen peroxide occur on poultry as a result of the proposed use.

Consequently, FDA requested that the petitioner submit laboratory data to demonstrate that there is reduced bacterial contamination on poultry processed with hydrogen peroxide and sodium bicarbonate, to provide TBA (2-thiobarbituric acid, a representative measure of lipid oxidation) values in skin/fat and meat from processed poultry, and to provide the basis to estimate the amount of hydrogen peroxide that reacts with poultry during the proposed treatment. FDA requested this information to: (1) Determine the bacteriocidal effectiveness of the petitioned use of the additive, (2) assess the degree of oxidation of poultry lipids by hydrogen peroxide, and (3) estimate the human dietary exposure to oxidation products that might be formed in the chicken during processing and might remain until consumption. The petitioner failed to submit this information that the agency had requested in several letters. Without this information the agency is not able to determine the microbiological efficacy and safety of treating fresh poultry with a mixture of hydrogen peroxide and sodium bicarbonate. This information is essential for the agency to determine whether the proposed use of this food additive is safe, and whether it will achieve its intended technical effect.

FDA has several safety concerns regarding the petitioned use of the mixture of hydrogen peroxide and sodium bicarbonate that would be addressed by the data and information that FDA requested from the petitioner. One concern is that this mixture may not kill significant numbers of the pathogenic microbes on the surface of the chicken skin. Thus, human exposure to these pathogens could be higher with the use of the mixture of hydrogen peroxide and sodium bicarbonate than human exposure to these pathogens from currently used methods for killing bacteria on the surface of chicken skin, for example processing poultry in chlorinated water. In addition, it is possible that the mixture of hydrogen peroxide and sodium bicarbonate will kill off nonpathogenic microbes, giving a competitive advantage to the pathogens, so that they may reproduce to higher numbers. Another safety concern is that hydrogen peroxide is a strong oxidant that could interact with lipids and other biological constituents in the skin of chicken to form oxidation products. These oxidation products could potentially be mutagenic and represent a hazard to consumers.

Thus, on March 9, 1992, because the petitioner failed to correct the deficiencies in the petition as previously described, FDA notified the petitioner that it would not continue to evaluate this submitted petition (Ref. 4).

Although the petitioner continued to correspond with the agency, at no time did he submit the requested information. In a September 18, 1995, letter to FDA the petitioner asked whether he had exhausted his administrative remedies. Before receiving a response from FDA, on December 6, 1995, the petitioner filed, in the U.S. District Court for the Northern District of Georgia, Gainesville Division, a pro se complaint against FDA and others alleging patent and copyright infringement, antitrust violations, Racketeer Influenced and Corrupt Organizations Act violations, fraud, and various torts. The Court dismissed the complaints without prejudice on March 20, 1996.

In a letter dated October 16, 1996, the agency responded to the petitioner's earlier question on whether the petitioner had exhausted his administrative remedies. In that letter, the agency stated that the petitioner had not exhausted his administrative remedies, and that he could either file a new petition that would include the supplemental information requested by the agency or send a written request to FDA asking the agency to file the petition as submitted in accordance with § 171.1(i)(1). The petitioner responded in a November 4, 1996, letter indicating that he wanted FDA to approve the proposed use of the additive and did not intend to supplement the petition. Therefore, on December 10, 1996, FDA filed the petition as submitted in accordance with § 171.1(i)(1) (62 FR 101, January 2, 1997).

The filed petition (FAP 7A4530) proposed that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. After reviewing the petition, which the petitioner did not supplement in order to correct previously identified deficiencies, the agency concluded that the petition does not contain data and information that would allow the agency to conclude that the food additive is safe and that it will achieve its intended technical effect. Therefore, FDA is denying FAP 7A4530 in accordance with 21 CFR 171.100(a).

References

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

1. Letter dated January 6, 1988, from FDA to the petitioner.
2. Letter dated April 14, 1988, from FDA to the petitioner.
3. Letter dated June 15, 1989, from FDA to the petitioner.
4. Letter dated March 9, 1992, from FDA to the petitioner.

Any person who will be adversely affected by the foregoing order may at any time on or before October 27, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered. Each numbered objection shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order to which objection is made, and state the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include

such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the order may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25588 Filed 9–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0398]

Guidance for Industry on Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for industry entitled ''Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations.'' This guidance document is intended to provide recommendations to pharmaceutical sponsors who intend to develop documentation in support of an in vitro/in vivo correlation (IVIVC) for an oral extended release (ER) drug product for submission in a new drug application (NDA), abbreviated new drug application (ANDA), or antibiotic drug application (ANDA/AADA).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of ''Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ramana Uppoor, Center for Drug Evaluation and Research, HFD–860, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5305.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance document for industry entitled ''Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations.'' This guidance document provides recommendations to pharmaceutical sponsors who intend to develop documentation in support of an IVIVC for an oral ER drug product for submission in an NDA, ANDA, or AADA. The guidance presents a comprehensive perspective on: (1) Methods of developing an IVIVC and evaluating its predictability; (2) using an IVIVC to set dissolution specifications; and (3) applying an IVIVC as a surrogate for in vivo bioequivalence when it is necessary to document bioequivalence during the initial approval process or because of certain preapproval or postapproval changes, e.g., formulation, equipment, process, and manufacturing site changes.

This guidance document represents the agency's current thinking on the development, evaluation, and application of in vitro/in vivo correlations for an oral ER drug product for submission in an NDA, ANDA, or AADA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

An electronic version of this guidance is also available on the Internet at http://www.fda.gov/cder/guidance/index.htm.

Dated: September 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25514 Filed 9–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 18, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–25183 Filed 9–25–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Vernal Pools of Southern California for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for Vernal Pools of Southern California. This plan addresses the endangered *Eryngium aristulatum* var. *parishii* (San Diego button celery), *Orcuttia californica* (California Orcutt grass), *Pogogyne abramsii* (San Diego mesa mint), *Pogogyne nudiuscula* (Otay mesa mint), San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus wootonii*), and the proposed threatened *Navarretia fossalis* (spreading navarretia). These five plant species and two shrimp species collectively occur on scattered and limited habitat on Federal and private lands remaining on the coastal terraces of Goleta and Isla Vista in Santa Barbara County, California to the Simi Hills of eastern Ventura County and the Santa Clarita region of Los Angeles County, east through Orange and western Riverside Counties, and the more extensive vernal pool complexes of San Diego County. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan received by December 26, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Telephone requests may be made by calling 760/431–9440.

FOR FURTHER INFORMATION CONTACT: Ann Kreager at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U. S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels necessary to reclassify them from endangered to threatened or remove them from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

Southern California vernal pools are habitat to at least 12 endemic plants and three endemic fairy shrimp species. Six of the endemic species are federally endangered: *Eryngium aristulatum* var. *parishii* (San Diego button celery), *Orcuttia californica* (California Orcutt grass), *Pogogyne abramsii* (San Diego mesa mint), *Pogogyne nudiuscula* (Otay mesa mint), San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus wootonii*); and one is proposed for threatened status: *Navarretia fossalis* (spreading navarretia).

Vernal pool habitat in southern California has suffered extensive loss and degradation. The objective of this plan is to stabilize and protect existing populations of *Eryngium aristulatum* var. *parishii, Pogogyne abramsii, Pogogyne nudiuscula, Orcuttia californica, Navarretia fossalis*, and San Diego and Riverside fairy shrimps. It is also the intent of this plan to establish new protected populations within their historic ranges, so that the listed species may be considered for reclassification to threatened status and the proposed rule for *Navarretia fossalis* may be withdrawn.

Public Comments Solicited

The Service solicits written comments on the recovery plan described herein. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 17, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland Oregon.

[FR Doc. 97–25580 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–4120–05; NMNM 99768]

Invitation To Participate; Exploration for Coal in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with San Juan Coal Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in San Juan County, New Mexico, and are described as follows:

T. 30 N., R. 14 W., NMPM
Sec. 17, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All;
Sec. 29, All;
Sec. 30, All;
Sec. 31, Lots 1, 2, 3, 4, N½N½S½;

Containing 4483.88 acres, more or less.

Interested parties may obtain a complete description of the lands covered in the exploration license application by contacting San Juan Coal Company, at the address shown below, or the Bureau of Land Management, New Mexico State Office, Solid Minerals Adjudication, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

Any parties electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, and the San Juan Coal Company, P.O. Box 561, Waterflow, NM 87421. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30-calendar days after the publication of this notice in the **Federal Register**.

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by San Juan Coal Company may be examined at the Bureau of Land Management, New Mexico State Office,

1474 Rodeo Road, Santa Fe, New Mexico 87502, and the Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico 87401–1808.

Dated: September 15, 1997.

Gilbert J. Lucero,

State Director.

[FR Doc. 97–25524 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–015–07–1060–04]

Notice of Public Meeting

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management, Lower Snake River District proposes to gather approximately 150 wild horses from the Hardtrigger, Black Mountain and Sands Basin Herd Area located within the Owyhee Herd Management Area. A public meeting will be held at 7:00 p.m. in the conference room of the Bureau of Land Management, Lower Snake River District Office located at 3948 Development Avenue, Boise, Idaho to discuss the proposed gathering. The proposed wild horse gathering is planned to begin on or about November 12, 1997. A helicopter will be used to gather the horses.

DATES: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Kim Schultsmeier or Jay K. Carlson, Bureau of Land Management, Boise District Officer, 3948 Development Avenue, Boise, Idaho 83705. Telephone (208) 384–3430.

Dated: September 17, 1997.

Jerry L. Kidd,

District Manager.

[FR Doc. 97–25530 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–GG–P–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP7–0282; OR–51831–WA]

Amendment of Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has amended its application in part to withdraw certain lands in the San Juan Archipelago. This action will amend the legal description and acreage but will not change the effects or duration of segregation which temporarily closed the lands from surface entry and mining until June 4, 1998. The public lands have been and will remain open to mineral leasing. Upon acquisition, the non-Federal land will be opened to the mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by December 26, 1997.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, 503–952–6155.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 61 FR 28594, June 5, 1996, which segregated the lands from settlement, sale, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2(1994)) but not from leasing under the mineral leasing laws, subject to valid existing rights. The purpose of the proposed withdrawal is to protect the natural and recreational values on seven waterfront tracts, one inland tract, and two islands in the San Juan Archipelago. On August 22, 1997, an amendment was filed which added 36.26 acres of public lands to the proposed withdrawal and deleted 4.39 acres of non-Federal land, and which affected Tracts H and K. The proposed withdrawal, is amended to read as follows:

Willamette Meridian

Public Lands

T. 34 N., R.1 W., (Tract H),
Sec. 17, those portions of the south 530 (formerly 200) feet of the N½SE¼ and SW¼SE¼ and SE¼SE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.

T. 34 N., R. 1 W., (Tract K),
Sec. 21, that portion of lot 2 and SW¼NW¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.

T. 34 N., R. 1 W., (Tract J),
Sec. 21, those portions of lot 2 and the SW¼NW¼, TOGETHER with tidelands of the second class abutting thereon as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.

T. 34 N., R.1 W., (Cape St. Mary, Tract L)
Sec. 15, lot 1.

T. 35 N., R.1 W., (Lopez Pass, Tract M)
Sec. 33, lot 1.

T. 36 N., R. 2 E., (Eliza Island, Tract N)
Sec. 5, unsurveyed portion of Eliza Island.

T. 36 N., R. 2 E., (Carter Point, Tract O)
Sec. 6, unsurveyed portion of Lummi Island.

T. 37 N., R. 1 E., (Lummi Rocks, Tract P)
Sec. 27, unsurveyed Lummi Rocks in the NW¼ and SW¼NE¼.

T. 37 N., R. 2 E., (Chuckanut Rock, Tract Q)
Sec. 24, unsurveyed Chuckanut Rock.

The areas described aggregate approximately 196.26 (formerly 160) acres of public lands in San Juan and Whatcom Counties.

Non-Federal Land

T. 34 N., R. 1 W., (Tract I)
Sec. 21, lot 1 and NW¼NW¼.

The area described contains 75.61 (formerly 80) acres of non-Federal land in San Juan County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the amended proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the amended proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the amended proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

The lands will remain segregated as specified above until June 4, 1998, unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: September 11, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–25529 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the San Luis Resort and Conference Center in Galveston, Texas on October 29–30, 1997.

The agenda will cover the following principal subjects:

—Report from the Coastal Impact Assistance Working Group
—Report from the Hard Minerals Subcommittee
—Central and Western Gulf of Mexico: Update and Challenges
—Update on Leasing and Activity
—Changing Geological Potential—Recent Discoveries and Drilling
—Technology Advances, Issues and Research
—Tight Demand for Rigs and Vessels
—Supply of Labor and Training
—Environmental Studies and Issues
—Eastern Gulf of Mexico Issues
—Geoogical Plays and Ecological Perspective
—Future Developments
—''The Promise and the Reward: 50 Years Offshore''
—U.N. Year of the Ocean
—Congressional Update
—OCS Scientific Committee Update
—Alaska and Pacific Regional Updates

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than October 17, 1997, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia 20170, Attention: Jeryne Bryant.

Request to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Wednesday, October 29 and Thursday, October 30, 1997.

ADDRESSES: The San Luis Resort and Conference Center, 5222 Seawall Boulevard, Galveston, Texas 77551—(800) 445–0090 or (409) 744–1500.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 23, 1997.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 97–25637 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Palm Springs Desert Museum, Palm Springs, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Palm Springs Desert Museum which meet the definition of ''sacred object'' and ''unassociated funerary object'' under Section 2 of the Act.

The 22 cultural items consist of a ceremonial bundle, a clay pipe with red pigment, a bone whistle, two dance sticks, four feather wands, a set of twelve wooden counting sticks for peon; a set of eight pieces used in peon, a clay pipe; a set of flicker feather straps; an olla with red pigment; a tortoise shell rattle; a small mortar and pestle set; a gray fox headband; a coyote skin headband; a bear fur piece; two bone and asphaltum whistles; and a strand of shell, ceramic and stone beads.

In 1954, the set of twelve wooden counting sticks for peon were donated to the Palm Springs Desert Museum by Cornelia B. White and A.E. Dickinson.

In 1958, a clay pipe was donated to the Palm Springs Desert Museum by Randall Henderson who indicated it was found in Indio Heights.

In 1961 and 1965, Dr. Lowell Bean, Anthropologist of the Palm Springs Desert Museum, purchased the ceremonial bundle, bone whistle, and two wooden dance sticks from unknown sources, and the tortoise shell rattle from Seraglio Welmas, a member of the Agua Caliente Band.

In 1965, the set of flicker feather straps, a clay pipe, two bone and asphaltum whistles, four ceremonial feather wands, the coyote headband, the gray fox headband, the bear fur piece, and the peon game were donated to the Palm Springs Desert Museum from unknown sources.

In 1985, a ceramic olla with red pigment was donated to the Palm Springs Desert Museum by Edward B. And Josefa Kaminski. This olla was removed from Tahquitz Canyon within the Agua Caliente reservation.

In 1990, a small granite mortar and pestle were donated to the Palm Springs Desert Museum by Ms. Mary Elizabeth Redeker. During the 1970s, Ms. Redeker was given the mortar and pestle by Nina Paul Shumway, who found these items in the Coachella Valley, site unknown, around 1920.

Consultation with representatives of the Agua Caliente Band of Cahuilla Indians indicates that the 21 items listed above are specific ceremonial objects used and worn in sacred ceremonies and needed by traditional Native American religious leaders for the practice of traditional Native American religion by their present-day adherents.

In 1975, a strand of bone, shell, and stone beads exhibiting blackening was donated to the Palm Springs Desert Museum by Nina Paul Shumway. Consultation with representatives of the Agua Caliente Band of Cahuilla Indians indicate that such blackening is consistent with cremation, the traditional funerary practice of the Agua Caliente Band of Cahuilla Indians.

Based on the above-mentioned information, officials of the Palm Springs Desert Museum have determined that, pursuant to 25 U.S.C. 3001(3)(B), the one strand of bone, shell, and stone beads is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a burial site of an Native American individual. Officials of the Palm Springs Desert Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(C), the remaining 21 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Palm Springs Desert Museum have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these 22 items and the Agua Caliente Band of Cahuilla Indians.

This notice has been sent to officials of the Agua Caliente Band of Cahuilla Indians, the Cabazon Indians of California, the Cahuilla Band of Mission Indians, the Los Coyotes Band of Mission Indians, the Morongo Band of Mission Indians, the Ramona Band of Cahuilla Indians, the Santa Rosa Reservation, the Soboba Band of Mission Indians, and the Torres-Martinez Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Katherine Hough, Director of Collections/Exhibitions, 101 Museum Drive, Palm Springs, CA 92262; telephone (760) 325–7186 before October 27, 1997. Repatriation of these objects to the Agua Caliente Band of Cahuilla Indians may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: September 19, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97– 25579 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Nevada in the Control of the Humboldt-Toiyabe National Forests, United States Forest Service, Elko, NV

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from Nevada in the control of the Humboldt-Toiyabe National Forests, United States National Forest Service, Elko, NV.

A detailed assessment of the human remains was made by U.S. Forest Service and Nevada State Museum professional staff in consultation with representatives of the Te-Moak Tribe of Western Shoshone, Ely Shoshone Tribe, Yomba Shoshone Tribe, Duckwater Shoshone Tribe, and the Duck Valley Shoshone-Paiute Tribes.

In 1972, human remains representing four individuals were recovered from site 26EK831 (Itsy Cave) during legally authorized excavations by Nevada State Museum archeologists. No known individuals were identified, however, the families of these individuals are known. The 47 associated funerary objects include leather and leather bands, a rusted key, a uniface and two utilized flakes, cloth and cloth fragments, a white button, string fragments, braided and twisted plant material cordage, two clay objects or coprolites, rock with scratches, pieces of ochre, cloth/paper fragments, Desert Side Notch projectile point, pot sherds, thread and thread fragment, peeled hardwood arrow shaft, Eastgate projectile point, animal bones, wood fragments, trimmed cut stick, buckle and strap, and white canvas and blue denim fragments.

Based on manner of interment and types of associated funerary objects, these individuals have been determined to be Native American. Based on archeological evidence and material culture of the site, site 26EK831 (Itsy Cave) has been identified as a Western Shoshone use and occupation site from the late precontact period to approximately the early 20th century. A medicine man, Killhorse Charlie (also known as Bronco Charlie) informed his niece, Ms. Theresa Temoke before his death that he had buried relatives at this location. Ms. Evelyn Temoke Roche', Ms. Theresa Temoke's daughter, has made a claim of lineal descent for these individuals on behalf of the related families.

During 1972–1973, human remains representing one individual were recovered from site 26EK801 (Bronco Charlie Cave) during legally authorized excavations by Nevada State Museum archeologists. No known individual was identified. No associated funerary objects are present.

Based on material culture including stone artifacts and ceramics recovered during the excavations, site 26EK801 has several occupations dating between 700 B.C. into the historic period. Excavation reports state that Western Shoshone artifacts were found throughout all levels of the deposits, and the early date for the site is based on a single projectile point type used between 700 B.C. until the early 19th century. Based on ceramics, lithics, and pictographs, the primary occupations of this site have been identified as late precontact Western Shoshone. Ethnographic reports the area surrounding this site was densely populated with single family camps and larger Western Shoshone winter villages. Additional ethnographic evidence indicates Bronco Charlie Cave is known and was identified as a sacred site by Killhorse (Bronco) Charlie.

Based on the above mentioned information, officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the U.S. Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 47 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2 (b)(1), Ms. Evelyn Temoke Roche' can trace her ancestry directly and without interruption by means of the traditional kinship system of the Te-Moak Tribe of Western Shoshone to the human remains and associated funerary objects from the Itsy Cave site. Lastly, officials of the U.S. Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains from Bronco Charlie Cave and the Te-Moak Tribe of Western Shoshone.

This notice has been sent to Ms. Evelyn Temoke Roche' and officials of the Te-Moak Tribe of Western Shoshone, Ely Shoshone Tribe, Yomba Shoshone Tribe, Duckwater Shoshone Tribe, and the Duck Valley Shoshone-Paiute Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Fred Frampton, NAGPRA Coordinator, Northeastern Nevada Ecosystem, Humboldt-Toiyabe National Forests, 2035 Last Chance Road, Elko, NV 89801; telephone: (702) 738–5171, fax: (702) 778–0299, before October 27, 1997. Repatriation of the human remains and associated funerary objects to Ms. Evelyn Temoke Roche' and the Te-Moak Tribe of Western Shoshone may begin after that date if no additional claimants come forward.

Dated: September 22, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–25578 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the permanent program inspection and enforcement procedures at 30 CFR part 840.

DATES: Comments on the proposed information collection must be received by November 25, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR 840.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR part 840.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements of the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, on occasion, and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 5,766.

Total Annual Burden Hours: 507,952.

Dated: September 22, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–25585 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development One Hundred and Twenty-Fourth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-fourth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9 a.m. to 5 p.m. on October 2, and from 9 a.m. to 12:15 p.m. on October 3, 1997, both days, at the Pan-American Health Organization, located at 525 23rd Street NW., Washington DC, 20523, in Conference Room B.

The agenda will concentrate on the strategic plan of the Agency for International Development, the activities of the Task Force to review the Collaborative Research Support Program (CRSP) Guidelines, and activities resulting from the 1996 World Food Summit.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Office of Agriculture and Food Security, 320 21st Street, NW., Room 2.11–072, Washington DC, 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet[glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Office of Agriculture and Food Security, 320 21st Street, NW., Room 211.005, Washington DC, 20523–2110, telephone him at (202) 712–5571 or fax (202) 216–3010.

Dated: September 5, 1997.

Tracy Atwood,

AID Designated Federal Officer, (Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 97–25527 Filed 9–25–97; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–751 (Final)]

Open-End Spun Rayon Singles Yarn From Austria

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Austria of open-end spun rayon singles yarn,[2] provided for in subheading 5510.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The product covered by this investigation is open-end spun singles yarn containing 85 percent or more rayon staple fiber.

the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 20, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Open-End Spun Rayon Yarn Producers, Gastonia, NC.[3] The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of open-end spun rayon singles yarn from Austria were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 7, 1997 (62 FR 16606). The hearing was held in Washington, DC, on August 12, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 22, 1997. The views of the Commission are contained in USITC Publication 3059 (September 1997), entitled ''Open-End Spun Rayon Singles Yarn from Austria: Investigation No. 731–TA–751 (Final).''

Issued: September 23, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–25628 Filed 9–25–97; 8:45 am]

BILLING CODE 7020–02–P

[3] Firms comprising the membership of the Ad Hoc Committee of Open-End Spun Rayon Yarn Producers consist of Burlington Madison Yarn Co., Greensboro, NC; Carolina Mills, Inc., Maiden, NC; National Spinning Co., Washington, NC; and Uniblend Spinners, Inc., Union, SC.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1873–97]

Freedom of Information Act Users Conference: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee Holding Meeting: Immigration and Naturalization Service, Freedom of Information Act and Privacy Act Program.

Date and Time: September 29, 1997, at 8:30 a.m.

Place: The Renaissance Washington DC Hotel, 999 9th Street, NW., Washington, DC, telephone number: (202) 898–9000.

Status: Open.

Purpose: The Immigration and Naturalization Service (Service) will hold a Freedom of Information Act (FOIA) Users Conference as a part of its renewed commitment to improving openness and responsiveness to the public. The purpose of the conference will be to open communications between the Service and its FOIA user community, to explain alternatives for access to Service information, and to obtain FOIA users' views for improving the process.

Summary of Agenda: The principal purpose of the meeting is to set forth the mission requirements of the Service and the types of records available from this component. Additionally, we want to obtain the views of the users. The agenda for the conference will include:

1. Registration;
2. Opening remarks;
3. Comments from the Commissioner;
4. Overview of FOIA requirements;
5. DOJ's openness policy;
6. Mission requirements;
7. Questions/Answer Section.

SUPPLEMENTARY INFORMATION: Pursuant to our initiative to implement President Clinton's and Attorney General Reno's commitment to openness in government and improved customer service, the general public is invited to participate in this, our first conference. This conference is open to the interested public, but limited to the space available. Persons wishing to attend should notify Gladys Glover at least 5 days prior to the conference by written notice to Immigration and Naturalization Service (FOIA/PA), Attention: Gladys Glover, 425 I Street, NW., Washington, DC 20536 or calling (202) 514–1722. Those wishing to fax their response to this notice may do so at (202) 514–4310.

Any member of the public may file a written statement with the Freedom of Information Act Office before the meeting of topics for discussion. Pending requests will not be discussed during the conference.

FOR FURTHER INFORMATION CONTACT: Mildred Carter, Freedom of Information Act and Privacy Act Program Specialist, Immigration and Naturalization Service, ULLICO Building, 2nd Floor, 425 I Street NW., Washington, DC 20536, Telephone (202) 514–1722.

Dated: September 23, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–25643 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP(NIJ)–1143]

RIN 1121–ZA89

National Institute of Justice Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 3

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice's ''Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 3.''

DATES: The deadline for receipt of proposals is close of business on December 15, 1997.

ADDRESSES: National Institute of Justice, 810 7th Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Dr. Richard M. Rau, National Institute of Justice, at (202) 307–0648. For a copy of the solicitation, please call NCJRS at 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1–800–421–6770.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–3, as amended, 42 U.S.C. 3721–3 (1994).

Background

The purpose of this solicitation is to provide funding to State and local governments to develop or improve the capability to analyze deoxyribonucleic acid (DNA) in State and local forensic laboratories. This program is authorized by the DNA Identification Act of 1994 (Pub. L. 103–322).

This solicitation is for the third year of the 5-year grant program authorized by the Act.

Interested State and local governments should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 3'' (refer to document no. SL000238).

The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via the Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set the modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 97–25516 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

September 23, 1997.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506). OMB approval has been requested by October 3, 1997. A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley, at (202) 219–5095 ext. 143.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503 (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

- Evaulate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Indian and Native American Welfare-to-Work Programs.

Frequency: Annual (Plan submission).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 150.

Total of Responses: 150.

Estimated Time Per Respondent: 6 hours.

Total Burden Hours: 900.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $3,000,000.00 per year (program administrative costs).

Description: This ICR concerns the submission of applications and plans by Federally-recognized tribes and Alaska Native entities (or consortia thereof) eligible to receive funding under the Indian and Native American Welfare-to-Work (INA W2W) program. These instructions include a pre-application process for those tribes which do not operate a tribal Temporary Assistance for Needy Families (TANF) program or a Native Employment Works (NEW) program, as established by Public Law 104–193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly called the ''Welfare Reform Act''). These non-TANF or NEW tribes must qualify as INA W2W grantees under the ''substantial services'' criteria established by the Department in accordance with the provisions of section 412(a)(3)(B)(ii) of the Social Security Act, as amended by section 5001(c) of Public Law 105–33 (the Balanced Budget Act of 1997). Once determined to have met the ''substantial services'' criteria, applicants must submit a plan containing a Standard Form (SF) 424, the basic information on service area, plans for providing client services, preliminary funding and expenditure estimates, and standard assurances and forms common to most Federal funds recipients. This emergency clearance is necessary to enable the Department to implement the INA W2W program as close to the legislatively-mandated beginning date of October 1, 1997 (Fiscal Year 1998) as possible, as authorized by Public Law 105–33. Also, quick implementation of the INA W2W program is desirable because many TANF recipients are reaching the exhaustion of their benefits, due to the time limits for receiving those benefits imposed by Public Law 104–193 (the ''Welfare Reform Act'').

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–25624 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Notice.

SUMMARY: The Department of Labor, as part of kits continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed instrument for collection monitoring data for the Summer Youth Employment Program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 25, 1997.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarify of the information to be collected; and

• Minimize the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: James Wiggins, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 219–7533 ext. 164 (this is not a toll-free number); internet address—wigginsj@doleta.gov; fax number (202) 219–7190.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Job Training Partnership Act Program, title IIB, the Department of Labor has established the Summer Youth Employment and Training Program to: (1) Enhance the basic education skills of youth; (2) encourage school completion or enrollment in supplementary or alternative school programs; provide eligible youth with exposure to the world of work; and (3) enhance the citizenship skills of youth. The Department of Labor is responsible for overseeing these programs. In order to carry out that responsibility, the Department has drafted a proposal to revise the current monitoring format and will continue using the current reporting instrument.

II. Current Actions

As result of obtaining input from employers and program operators and the convening of a workgroup to minimize reporting burdens, ETA will develop a new collection instrument to determine whether or not the GPRA goals are being achieved. This information will permit the Department to fulfill requests from the U.S. Congress, the Administration, the media and the public.

Type of Review: New.

Agency: Employment and Training Administration, U.S. Department of Labor.

Title: Summer Youth Employment and Training Program.

OMB Number: 1205–XXXX.

Recordkeeping: Retention for three years.

Affected Public: States.

Cite/Reference/Form/etc: Summer reporting (Planning estimates, Mid-summer, Final) and regional monitoring.

Total Respondents: 56.

Frequency: Other (Before the start of the summer program—Planning estimates, Mid summer, End of Summer report and annual monitoring).

Total Responses: 56.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 448.

Total Burden Cost (operating/maintaining): $6,720.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 22, 1997.

Charles L. Atkinson,

Deputy Administrator, Office of Job Training Programs.

[FR Doc. 97–25622 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the ''Construction Industry Benefits Test.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 25, 1997. The Bureau of Labor Statistics is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Employment Standards Administration (ESA) has determined that research should be conducted into alternative ways of collecting information for Davis-Bacon Act purposes. As a result, ESA's Wage and Hour Division (WHD) wishes to evaluate the usefulness of BLS data in the Davis-Bacon wage determination process.

The Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a) requires that workers employed on federal construction contracts valued in excess of $2,000 be paid wages and fringe benefits that, at a minimum, have been determined by the Secretary of Labor to be prevailing for corresponding classes of workers employed on projects similar in character to the contract work in the area where the construction takes place. The prevailing wage is defined by Department of Labor regulations as the wage paid to more than 50 percent of the workers in the job classification on similar projects in the area during the period in question. If the majority of those employed in the classification are not paid the same wage, the prevailing wage is determined by calculating the average of the wages paid. In cases where the majority of workers in a classification are represented by a union

and are paid the same rate, the union rate is the prevailing rate.

Current Actions: The Employment Standards Administration (ESA) and the Bureau of Labor Statistics (BLS), Office of Compensation and Working Conditions (OCWC) have entered into an interagency agreement to test the feasibility of BLS collecting and publishing information on the incidence of and employer costs for specific benefits by detailed construction occupations in local areas. The purpose is to provide ESA with an alternative method for arriving at compensation determinations for the construction industry as required by the Davis-Bacon Act.

BLS will provide ESA with the survey results in both a publication and an electronic file. In addition, BLS will provide respondents and other interested parties with the survey results.

BLS plans wage and benefit collection in four metropolitan areas, Jacksonville, Florida; Salt Lake City-Ogden, Utah; Toledo, Ohio; and Tucson, Arizona. In each locality, BLS will survey a sample of establishments and, within each establishment, take a sample of blue-collar jobs. Information will be collected on benefits incidence and costs, hours worked, wages, and worker characteristics such as union/nonunion and full-time/part-time job status.

The compensation data will include the following information:

- Incidence of employee benefits by occupation;
- Employer benefits cost by occupation; and
- Median and mean earnings by occupation.

Worker characteristic information will include the following:

- Union and nonunion;
- Full-time and part-time; and
- Time and incentive.

The types of benefit information collected will include:

- Health, life, and disability insurance;
- Retirement plan information;
- Leave information; and
- Overtime, shift, and bonus pay.

Depending upon response levels, varying degrees of occupational detail will be produced.

The survey forms to be used for this test are the Employment Cost Index forms previously approved under the National Compensation Survey (OMB Number 1220–0164). BLS will use the information collected in this test for statistical purposes only. To the full extent permitted by law, BLS will hold the information in confidence and will not disclose it without the written consent of respondents.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics.

Title: Construction Industry Benefits Test.

OMB Number: 1220-New.

AFfected Public: Business or other for-profit.

Fiscal year average	Number of respondents per year	Responses per year	Total responses per year	Average minutes per response	Total burden hours
BLS 3038A	550	1	468	75	585
BLS 3038B	550	1	468	35	273
BLS 3038D	550	1	468	180	1404
Quality assurance	117	1	117	10	20
Average annual burden	550	1	468	293	2282

Total Burden Cost (capital/startup): $0.

Total Burden Coast (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 23rd day of September, 1997.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–25623 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–24–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

Westinghouse Electric Corporation; Waltz Mill Test Reactor Consideration of Approval of Transfer of License and Issuance of a Conforming Amendment to Facility License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving, under 10 CFR 50.80, the transfer of Facility License No. TR–2, to the extent now held by Westinghouse Electric Corporation, to a new corporate entity which will utilize the same name. The license authorizes possession of the shut down test reactor at the Waltz Mill site in Westmoreland County, Pennsylvania. The Commission is also considering the issuance of a conforming amendment under 10 CFR 50.90.

The Westinghouse Electric Corporation, organized in 1886, is presently composed of industrial businesses and media operations (including the production and transmission of radio and television programming). It plans to reorganize into two separate corporations. One of these will retain certain assets and operations relating to the Westinghouse industrial businesses. This corporation will eventually retain the name Westinghouse Electric Corporation (WELCO). The license for the Waltz Mill Test Reactor will be held by this corporation.

The other corporation will be named CBS corporation, and will include the media operations and those industrial businesses which are not being transferred to WELCO.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

Before issuance of the proposed license amendment which will reflect

the proposed license transfer, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will transfer [SIC] the Westinghouse Test Reactor (''WTR facility'') license, a possession only license, from Westinghouse to WELCO. This amendment request is necessary because of a proposed transfer by Westinghouse of certain of its industrial businesses to a company to be known from and after the closing date of the transactions as WELCO. As a result of the transfer of these businesses, WELCO will be financially qualified to hold the WTR facility possession only license.

Furthermore, WELCO employees will be technically qualified to carry out licensed activities. In connection with the pending transactions, current Westinghouse employees for the licensed WTR facility to be transferred will become WELCO employees and will continue to be responsible after the transfers to WELCO. The proposed amendment does not involve any changes in licensed activities which will continue in their current form without any interruptions of any kind resulting from the amendment.

The proposed amendment does not require any physical change to the WTR facility or changes to Technical Specifications or procedures. The proposed change does not increase the probability of an accident previously evaluated because it does not affect any initiators in any of the previously evaluated accidents. The proposed change does not increase the consequences of any accident previously evaluated because it does not affect any of the items on which the consequences depend.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not modify the WTR facility configuration or licensed activities. Thus no new accident initiators are introduced. Therefore, the proposed amendment does not create the possibility of a new or different accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This amendment request is necessary because of a proposed transfer of the WTR facility license from Westinghouse to WELCO. As a result of the transfer of these businesses, WELCO will be financially qualified to hold the WTR facility possession only license.

WELCO will be technically qualified to carry out licensed activities. In connection with pending transactions, current Westinghouse employees responsible for the licensed WTR facility to be transferred will become WELCO employees and will continue to be responsible after the transfers to WELCO. The proposed amendment does not involve any changes in licensed activities which will continue in their current form without any interruptions of any kind resulting from the amendment.

The proposed change does not alter any margin of safety because it does not involve any changes in the WTR facility or licensed activities which will continue in their current form without any interruptions of any kind resulting from the amendment.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30 day notice period. However, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules 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 6–D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 27, 1997, the licensee may file a request for a hearing with respect to the issuance of an order regarding the proposed transfer of the license and issuance of a conforming amendment to the subject license to reflect the transfer, 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 Commissions'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. 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 transfer approval or 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 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 with respect to the proposed amendment, 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 a 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 such 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 Lisa A. Campagna, Assistant General Counsel, Law Department, Westinghouse Electric Corporation, P.0. Box 355, Pittsburgh, Pennsylvania 15230, 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 dated August 18, 1997, regarding the transfer of license and amendment, and the letter dated August 15, 1997, from the licensee which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 17th day of September 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25629 Filed 9–25–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–390

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley Authority, (TVA), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow the licensee to utilize the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Case N–514, ''Low Temperature Overpressure Protection'' to determine its low temperature overpressure protection (LTOP) setpoints and is in accordance with the licensee's application for exemption dated June 20, 1997. The proposed action requests an exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' to allow application of an alternate methodology to determine the LTOP setpoints for the Watts Bar Nuclear Plant.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Watts Bar reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed the use of safety margins based on an

alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

The proposed alternate to the methodology of Appendix G is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, ''Low Temperature Overpressure Protection,'' which has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, ''Codes and Standards,'' and Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability'' have not been updated to reflect the acceptability of Code Case N–514.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR Part 50, Appendix G and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. Appendix G of 10 CFR Part 50 defines P/T limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR Part 50, Appendix G, may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of power-operated relief valves (PORVs) that are set at a pressure below the LTOP enabling temperature that would prevent the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR Part 50, Appendix G. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump (RCP) starting and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint.

In addition, to prevent damage to RCP seals, the operator must maintain a minimum differential pressure across the RCP seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start an RCP and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. 10 CFR Part 50, Appendix G, safety margin adds instrument uncertainty in the LTOP setpoint. The licensee's current LTOP analysis indicates that using this 10 CFR Part 50, Appendix G, safety margin to determine the PORV setpoint would result in an operating window between the LTOP setpoint and the minimum pressure required for RCP seals which is significantly restricted when physical conditions such as PORV overshoot, RCP Delta Ps, and static head corrections are taken into account in setpoint determination. Operating with these limits could result in the lifting of the PORVs or damage to the RCP seals during normal operation. Using Code Case N–514 would allow the licensee to recapture most of the operating margin that is lost by factoring in the instrument uncertainties in the determination of the LTOP setpoint. The net effect of using Code Case N–514 is that the setpoint will not change significantly with the next setpoint analysis. Therefore, the licensee proposed that in determining the setpoint for LTOP events for Watts Bar, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR Part 50, Appendix G. The alternate methodology is consistent with the ASME Code Case N–514. The content of this Code Case had been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated June 20, 1997, the licensee requested an exemption from 10 CFR 50.60 to allow it to utilize the alternate methodology of Code Case N–514 to compute its LTOP setpoints.

Environmental Impacts of the Proposed Action

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there is no significant environmental impact associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement, Supplement No 1, for WBN Units 1 and 2, dated April 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on August 21, 1997 the staff consulted with the Tennessee State official, Mr. J. Graves of the Division of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 20, 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 Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 22nd day of September 1997.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II.

[FR Doc. 97–25631 Filed 9–25–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, Et Al., San Onofre Nuclear Generating Station, Units 2 and 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR 2.206 received from Mr. Stephen Dwyer dated September 22, 1996, as supplemented by letter dated December 10, 1996, two e-mails of March 26, 1997, and an e-mail of May 28, 1997, for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3.

The Petition requests that the Commission shut down the San Onofre Nuclear Generating Station pending a complete review of the ''new seismic risk.'' As a basis for the request, the Petitioner asserts that a design criterion for the plant, which was ''0.75 G's acceleration,'' is ''fatally flawed'' on the basis of the new information gathered at the Landers and Northridge quakes. The Petitioner asserts (1) that the accelerations recorded at Northridge exceeded ''1.8 G's and it was only a Richter 7+ quake,'' (2) that there were horizontal offsets of up to 20 feet in the Landers quake, and (3) that the Northridge fault was a ''Blind Thrust and not mapped or assessed.''

The Director of the Office of Nuclear Reactor Regulation has determined that the request should be denied for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–23), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the Local Public Document Room located at the Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 19th day of September 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

By Petition dated September 22, 1996, Stephen Dwyer (Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action with regard to San Onofre Nuclear Generating Station (SONGS). The Petitioner requested that the NRC shut down the SONGS facility ''as soon as possible'' pending a complete review of the ''new seismic risk.'' [1] The Petitioner asserted as a basis for this request that a design criterion for the plant, which was ''0.75 G's acceleration,'' is ''fatally flawed'' on the basis of new information gathered at the Landers and Northridge earthquakes. The Petitioner asserted (1) That the accelerations recorded at Northridge exceeded ''1.8G's and it was only a Richter 7+ quake,'' (2) that there were horizontal offsets of up to 20 feet in the Landers quake, and (3) that the Northridge fault was a ''Blind Thrust and not mapped or assessed.'' On November 22, 1996, the NRC staff acknowledged receipt of the Petition as a request pursuant to 10 CFR 2.206 and informed the Petitioner that there was insufficient evidence to conclude that the requested immediate action was warranted. Notice of the receipt of the Petition indicating that a final decision with respect to the requested action would be forthcoming at a later date was published in the **Federal Register** on November 29, 1996 (61 FR 60734).

The Petitioner provided supplemental information in support of his Petition in a letter dated December 10, 1996, two e-mails dated March 26, 1997, and an e-mail dated May 28, 1997.[2] My Decision in this matter follows.

II. Discussion

A. Regulatory Requirements Associated With Potential Earthquake Motion and the Licensing Basis for SONGS

The design bases for each nuclear power plant must take into account the potential effects of earthquake ground motion.[3] The seismic design basis, called the safe-shutdown earthquake (SSE), defines the maximum ground motion that certain structures, systems, and components necessary for safe shutdown are designed to withstand.[4] SONGS Units 2 and 3 seismic design basis is consistent with the siting criteria set forth in Title 10 of the Code of Federal Regulations, Part 100, Appendix A, ''Seismic and Geologic Siting Criteria for Nuclear Power Plants.'' Appendix A describes the nature of the investigations required to

[1] In his e-mail dated March 26, 1997, supplementing his Petition, the Petitioner also requested removal of ''all spent fuel out of the southern California seismic zone.''

[2] By letter dated June 26, 1997, the NRC staff advised the Petitioner that his e-mail dated April 25, 1997, concerning the ability of the SONGS steam generators to withstand a major seismic event, would be treated as a separate 10 CFR 2.206 Petition.

[3] See 10 CFR Part 50, Appendix A, Criterion 2 and 10 CFR 50.34(a)(1)(i); see also 10 CFR Part 100, Appendix A, V.(a) which provides, in part, that ''the design of each nuclear power plant shall take into account the potential effects of vibratory ground motion caused by earthquakes.'' The investigative obligations of 10 CFR Part 100, Appendix A, which are only imposed explicitly on applicants for construction permits, were effective December 13, 1973 (38 FR 31279, November 13, 1973). The Licensing Board issued its decision regarding the SONGS Units 2 and 3 construction permits on October 15, 1973. However, the SONGS site was reviewed against the Appendix A criteria during the construction permit licensing review which was updated at the operating license review stage.

[4] The SSE is defined, in part, as ''that earthquake which is based upon an evaluation of the maximum earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material. It is that earthquake which produces the maximum vibratory ground motion for which certain structures, systems, and components are designed to remain functional.'' See 10 CFR Part 100, Appendix A. III.(c).

obtain the geologic and seismic information necessary to determine site suitability and provide reasonable assurance that a nuclear power plant can be constructed and operated at a site without undue risk to health and safety of the public. Among other particulars, Appendix A requires[5]—

- Determination of the lithologic, stratigraphic, hydrologic, and structural geologic conditions of the site and the region surrounding the site.
- Identification and evaluation of tectonic structures underlying the site and the region surrounding the site, whether buried or expressed at the surface.
- Evaluation of physical evidence concerning the behavior during prior earthquakes of the surficial geologic materials and substrata underlying the site.
- Determination of the static and dynamic engineering properties of the materials underlying the site, such as seismic wave velocities, density, water content, porosity, and strength.
- Listing of all historically reported earthquakes that affected or that could reasonably be expected to have affected the site.
- Correlation of epicenters of historically reported earthquakes, where possible, with tectonic structures, any part of which is located within 320 kilometers (200 miles) of the site. Epicenters that cannot be correlated with tectonic structures shall be identified with tectonic provinces, any part of which is located within 320 kilometers (200 miles) of the site.
- For capable faults[6] that may be of significance in establishing the SSE or that are longer than 330 meters (1000 feet) and within 8 kilometers (5 miles) of the site, determination of the length of the fault; the relationship of the fault to the regional tectonics structures; and the nature, amount, and geologic history of displacements along the fault, including the estimated amount of maximum Quaternary displacement related to any one earthquake along the fault are required.

The information collected in these investigations is used to determine the vibratory ground motion at the site, assuming that the epicenters of the earthquakes are situated at the point on the tectonic structures or in the tectonic provinces nearest to the site. The earthquake that could cause the maximum vibratory ground motion at the site is designated the SSE. The vibratory ground motion produced by the SSE is defined by response spectra, which are smoothed design spectra developed from a set of vibratory ground motions caused by more than one earthquake.

SONGS was licensed consistent with the seismic and geologic siting criteria for nuclear power plants set forth in 10 CFR Part 100, Appendix A, described above. The site has undergone geologic, geophysical, geotechnical, and seismic investigations and reviews that are at least as thorough and comprehensive as those of any critical facility.[7] The SONGS SSE is based on the assumed occurrence of a surface-wave (M_S)[8] magnitude 7 earthquake on the offshore zone of deformation (OZD), a right lateral strike slip fault zone, approximately 8 kilometers from the site at its closest approach. This magnitude 7 event is larger than any earthquake known to have occurred on the OZD, and the resulting ground motion estimate is larger than that which could reasonably be expected at the SONGS site from any other seismic source. The determination of the SSE was made in accordance with the criteria and procedures specified in Appendix A to 10 CFR Part 100 and using a multiple hypothesis approach in which several different methods were used to determine each parameter; sensitivity studies were performed to account for the uncertainties in the earth sciences.

In addition, the plant has design margins (capability) well beyond the demands of the SSE. The ability of a nuclear power plant to resist the forces generated by the ground motion during an earthquake is thoroughly incorporated in the design and construction of the plant. The codes that govern the construction of residential and commercial buildings are far less stringent than the requirements for nuclear power plants. As a result, nuclear power plants are able to resist earthquake ground motions well beyond their design basis, the SSE, and far above the ground motion that would result in damage to buildings designed and built to commercial codes.

The geologic and seismic siting and the design of SONGS were reviewed by the NRC staff, the U. S. Geologic Survey, the National Oceanic and Atmospheric Administration, the Advisory Committee on Reactor Safeguards and were litigated before the Atomic Safety Licensing Board before they were licensed by the Commission.[9] The NRC continually monitors the adequacy of the design of nuclear power plants in order to protect the public health and safety. The SONGS licensee performed an individual plant examination of external events (IPEEE).[10] The IPEEE is a program that involves the evaluation of the capability of a nuclear power plant to withstand the effects of several natural phenomena such as earthquakes, fires, and floods, well beyond its design bases. The most recent geologic and seismic information for the southern California region was used in the probabilistic analysis to quantify the seismic hazard and the uncertainties for the SONGS site for this program.

The ground motion from an earthquake at a particular site is a function of the magnitude and focal mechanism (type of faulting, i.e., normal, reverse, strike slip) at the earthquake source. It is also a function of the distance of the facility from the

[5] See 10 CFR Part 100, Appendix A. IV.

[6] A capable fault is a fault which has exhibited one or more of the following characteristics: (1) Movement at or near the ground surface at least once within the past 35,000 years or movement of a recurring nature within the past 500,000 years, (2) Macro-seismicity instrumentally determined with records of sufficient precision to demonstrate a direct relationship with the fault, and (3) A structural relationship to a capable fault according to characteristics (1) or (2), above, such that movement on one could be reasonably expected to be accompanied by movement on the other. See 10 CFR Part 100, Appendix A.III(g).

[7] The findings of these investigations were reviewed extensively by the staff and were litigated in proceedings concerning the issuance of the construction permit and operating licenses for SONGS Units 2 and 3. See LBP–73–36, 6 AEC 929 (1973); ALAB–248, 8 AEC 957 (1974) and see LBP–82–3, 15 NRC 61 (1982); ALAB–673, 15 NRC 688 (1982); ALAB–717, 17 NRC 346 (1983); and see Carstens v. NRC 742 F.2d 1546 (D.C. Cir. 1984), cert. denied, 471 U.S. 1136 (1985) (the Court of Appeals affirmed the Commission's granting of the operating licenses for SONGS Units 2 and 3, noting the voluminous record and substantial evidence supporting the seismic review).

[8] In 1935, Charles Richter introduced the concept of magnitude to describe the size of earthquakes. His original formula was based on events in southern California recorded on torsion seismographs within 600 km of the epicenter. This is the magnitude labeled M_L. Over the years Richter and others developed formulas to compute magnitudes from body and surface waves (m_b and M_S) at distant (teleseismic) stations as well as other methods to compute magnitudes for local events in other areas of the world. Most of these methods of computing magnitude use as the measured variable the amplitude of one or more seismic waves. All of these magnitude procedures, including the moment magnitude M_W, have been developed to produce a number which represents the size of an earthquake, and each was shingled onto Richter's original procedure so that the formulas would produce similar values at particular places on the magnitude scale. Each computation procedure has its own magnitude or distance range over which it is valid. Surface wave magnitude is normally calculated from the amplitudes of waves with periods near 20 seconds. Moment magnitude is based on the seismic moment. Seismic moment is calculated from recordings on digital seismographs and compared to the waveforms synthetic seismograms from numerical models of the fault rupture to determine the moment.

[9] See cases cited *supra* note 7.

[10] See response to Generic Letter 88–20, Supplement 4, Individual Plant Examination of External Events (IPEEE) dated December 15, 1995, discussed, *infra*, at pages 22–24.

fault and the geology immediately under the facility site. The estimates of SSE ground motion for the SONGS site conform with the procedures and criteria specified in 10 CFR Part 100, Appendix A and the Standard Review Plan (SRP)[11] Sections 2.5.1 and 2.5.2 (NUREG–0800). As previously stated, the earthquake that was determined to control the design of SONGS is a M_S=7 located on the OZD at a distance of 8 kilometers from the site. The appropriate level of conservatism for characterizing the ground motion through a site-specific spectrum as specified in SRP 2.5.2 is the 84th percentile. This level of conservatism was used in the design and licensing review of SONGS, Units 2 and 3.

Since the SONGS plants were licensed, a new magnitude scale, moment magnitude (M_W), has come into common usage. The most recently published ground motion attenuation relationships[12] use M_W. An attenuation relationship is a relationship between sized earthquake, distance to fault and the amplitude of the ground motion. Since magnitude 7 M_W is equal to magnitude 7 M_S,[13] there is no need to make a conversion between M_W and M_S when comparing the ground motion estimates obtained using the recent attenuation relationships to the SONGS SSE ground motion.

B. Responses to the Petitioner's Concerns

1. Concern that SONGS is in a High Seismic Hazard Area

In the enclosure to his letter,[14] the Petitioner referenced ''a recent paper by M. D. Petersen et al. (Seismic Hazard Analysis, AEG, 1–20–96)'' and stated that it concludes that the entire Los Angeles, Ventura, and Orange Counties are high hazard areas. The Petitioner stated that the paper also concludes that accelerations of 0.4g (pga), 1.0g (0.3-sec SA), and 0.5g (1-sec SA) can occur nearly everywhere.

The NRC staff attempted to find the reference mentioned by Mr. Dwyer but was unsuccessful. Mark D. Petersen of the California Division of Mines and Geology informed the staff that the correct reference is an article that he and his coauthors published in the Bulletin of the Seismological Society of America.[15] Dr. Petersen made a presentation at a workshop on seismic hazard in southern California in January 1996 and gave participants in the workshop preprints and reprints of some of his recent publications. The cited reference was one of these handouts.

In the section of the paper entitled ''Hazard Maps,'' the authors state:

> The DMG probabilistic seismic hazard maps (10% exceedance in 50 years) for peak ground acceleration (pga) and 5% damped spectral acceleration (SA) at 0.3-and 1-sec periods on alluvial site conditions are shown in Figures 3 through 5. These maps may be useful in characterizing regional variations in seismic hazard in southern California but should not be used as input for detailed site-specific estimates of ground shaking in the earthquake-resistant design of individual structures.[16]

The paper then states—

> The three maps show similar hazard patterns that indicate high hazard over the entire tri-county area. The expected peak accelerations exceed 0.4g (pga), 1.0g (0.3 s SA), and 0.5g (1 s SA) nearly everywhere in the tri-county area.''[17]

To address the acceleration values mentioned by the Petitioner with respect to SONGS, the NRC staff has produced Figure 1, which contains a plot of the SONGS SSE seismic response spectrum at 5 percent of critical damping and the values quoted from the Petersen paper. Since period in seconds is the reciprocal of frequency in Hertz, the 1-second period spectral acceleration (0.5g) is plotted at a frequency of 1 Hertz, the 0.3-second period acceleration (1.0g) is plotted at a frequency of 3.33 Hertz and the peak ground acceleration (0.4g) is plotted at a frequency of 33 Hertz. The figure demonstrates that the spectral accelerations (accelerations plotted in the response spectra) used in the design of SONGS are significantly higher than those from the Petersen paper, thus showing the conservatism of the design basis for SONGS.

2. Concern About a Large Earthquake on the San Andreas Fault

In the enclosure to his letter dated December 10, 1996, entitled ''Uncertainty Factors Affecting Seismic Risk Risk Modelling in Southern California,'' the Petitioner stated ''We must prepare for a great event on the Southern San Andreas Fault.'' He also mentioned an earthquake on the San Andreas in his e-mail message.[18]

The NRC staff agrees that there must be preparation for a large event on the San Andreas fault and finds that the SONGS seismic design is well able to withstand the demands of a large earthquake on the southern San Andreas fault. Although the geologic evidence appears to indicate that the largest event to have occurred on the southern San Andreas in the Quaternary Period (the last 2 million years) is estimated to have been in the moment magnitude (Mw) range of 7.5 to 8; to evaluate the potential ground motion at the SONGS site from a large earthquake on the southern San Andreas fault, the staff made the very conservative assumption of a moment magnitude 8.25 strike-slip earthquake at the closest distance of the San Andreas fault to the site (90 kilometers). This assumption was made to calculate the effects of a large earthquake on the San Andreas fault. The results are plotted in Figure 2 which demonstrates that the design basis (SSE) spectrum for SONGS is much higher than the ground motion estimates from the Mw 8.25 on the San Andreas fault using four recent attenuation relationships. These four empirical attenuation relationships were developed after the occurrence of the Northridge and Landers earthquakes, and include the recent strong ground motion from these events. They were performed by internationally known experts in earthquake ground motion analysis and were published in the Seismological Research Letters,[19] the peer-reviewed journal of the Seismological Society of America. The assumption of a moment magnitude 8.25 strike-slip earthquake and the

[11] Standard Review Plan (SRP) is used as guidance for the Office of Nuclear Reactor Regulation staff responsible for the review of applications to construct and operate nuclear power plants.

[12] N. A. Abrahamson and W. J. Silva, ''Empirical Response Spectral Attenuation Relations for Shallow Crustal Earthquakes,'' Seismological Research Letters, 68, 94–127 (1997); David M. Boore, William B. Joyner, and Thomas E. Fumal, ''Equations for Estimating Horizontal Response Spectra and Peak Acceleration From Western North American Earthquakes: A Summary of Recent Work,'' Seismological Research Letters, 68, 128–153 (1997); K. W. Campbell, ''Empirical Near-Source Attentuation Relationships for Horizontal and Vertical Components of Peak Ground Acceleration, Peak Groud Velocity and Pseudo-Absolute Aceleration Response Spectra,'' Seismological Research Letters, 68, 154–179; K. Sadigh, C.Y. Chang, J. A. Egan, F. Makdisi, and R. R. Yongs, ''Attentuation Relationships for Shallow Crustal Earthquakes Based on California Strong Motion Data,'' Seismological Research Letters, 68 180–189 (1997).

[13] Thorne Lay and Terry C. Wallace, Modern Global Seismology, Academic Press, Inc., San Diego, California; K. W. Campbell (1995).

[14] Stephen Dwyer, Letter to Dr. Shirley Jackson and Frank J. Miraglia, Jr., with enclosure, dated December 10, 1996.

[15] Mark D. Petersen, Chris H. Cramer, William A. Bryant, Michael S. Reichle, and Tousson R. Toppozada, ''Preliminary Seismic Hazard Assessment for Los Angeles, Ventura, and Orange Counties, California, Affected by the 17 January 1994 Northridge Earthquake,'' Bulletin of the Seismological Society of America, 86, S247–S261 (1996).

[16] Id.

[17] Id.

[18] Stephen Dwyer, e-mail message to Dr. Jackson, Subject: San Onofre Nuclear Power Plant Risk, dated September 22, 1996.

[19] Abrahamson and Silva, *supra* note 12.

SONGS site foundation geology were used as input parameters for these four earthquake ground motion attenuation relationships.[20] The ground motion estimates were made at the 84th percentile level recommended by SRP Section 2.5.2. The plots of the results obtained from these four attenuation relationships and the SONGS Units 2 and 3 SSE design response spectrum are shown in Figure 2. The plotted information in the figure demonstrates that the SONGS design is well able to accommodate the demand of the ground motion of the large earthquake on the southern San Andreas fault since it envelopes the estimates of the four relationships at all frequencies.

3. Concern About the SONGS Design Basis in Light of the Landers and Northridge Earthquakes

In an e-mail message to Chairman Jackson dated September 22, 1996, the Petitioner stated—

I am a geologist in Southern California, and I am deeply concerned by the current situation at San Onofre NPP. The design criteria for this old plant was 0.75 G's acceleration. With the new information gathered at the Landers and Northridge Quakes, this criteria is fatally flawed. The accelerations recorded at Northridge exceeded 1.8 G's !!! and it was only a Richter 7+ quake. Horizontal offsets of up to 20 feet in the Landers quake were also way beyond geologists and seismologists estimates. The whole science is in disarray. Also the Northridge fault was a ''Blind Thrust' and not mapped or assessed. If we have a larger quake here on the San Andreas, or a smaller one closer to the plant, well I hate to imagine * * *. What's even worse is the fact that scientists are not able to give us the info we need to evaluate the situation.

The main points of the Petitioner's message appear to be—

- A peak ground acceleration recorded from the Northridge magnitude Mw 6.7 earthquake exceeded 1.8 g.
- The Northridge earthquake occurred on a blind fault that had not been mapped or assessed.
- The maximum horizontal displacement of almost 20 feet due to the Landers magnitude 7.3 earthquake is much larger than would be estimated.
- Scientists are not able to provide the information to evaluate the situation.

The magnitude 6.7 Northridge earthquake of January 17, 1994, occurred on a buried thrust fault in the San Fernando Valley and was similar to the 1971 San Fernando Valley earthquake. The distance from this earthquake epicenter to the SONGS site is about 130 kilometers (80 miles). The Northridge earthquake was felt at SONGS. A free-field seismic instrument at SONGS recorded a peak ground acceleration of 0.025g, which is significantly less than the SSE peak ground acceleration of 0.67g, thus indicating that an earthquake in the epicentral region of Northridge poses no threat to the plant.

The peak ground acceleration of 1.8g from the Northridge earthquake referred to by the Petitioner was recorded by the California Division of Mines and Geology station in Tarzana. The anomalous character of the seismic response at the Tarzana site is well known.[21] The intense shaking at the Tarzana site is a condition of the site and is not characteristic of the Northridge earthquake. This fact is demonstrated by the unusually strong ground motion that was also observed there during the 1987 Whittier Narrows earthquake[22] and during the aftershocks following both the Northridge and Whittier Narrows mainshocks. In recognition of the unusually high ground motion recordings at Tarzana, there have been a number of studies of this site[23] to try to determine the cause of the high recordings. These studies have attributed the high peak ground accelerations to the site's specific geology. The anomalous site effect was found to be confined to a small area 50 meters in radius around the station; beyond this area, the ground motion recordings were down to their normally expected values. It is, therefore, inappropriate to rely on data recorded at the unique Tarzana site to make judgments about ground motion estimates at other locations. The geologic formations under the SONGS site differ from those at the Tarzana site. The SONGS site does not anomalously amplify the earthquake ground motion as the Tarzana site does. During the evaluation of the site no geologic formations under SONGS were identified that would result in exceptionally high earthquake ground motions. Further, recorded earthquakes at SONGS have not exhibited any unusual amplifications.

As a result of their studies of the near field ground motions from thrust faults, Somerville et al.[24] found that the ground motions from the Northridge earthquake, in general, are within the 84th percentile when compared to previously developed empirical attenuation relations for thrust faults. This finding indicates that the Northridge ground motion data would not cause seismologists to revise ground motion estimates for thrust fault earthquakes. The data from this earthquake have been incorporated into the strong ground motion databases and have not significantly altered the results of the attenuation relationships. In addition, it is inappropriate to use the ground motions from thrust faults for estimates in a region in which there is no potential for this type of faulting, such as the South Coast Borderland where SONGS is located.

To address the issue of whether there is a potential for buried thrust faults at the SONGS site, the staff referred to a book by Yeats et al.[25] that contains a list and a map of the regions of the world that have the potential for large reverse-fault earthquakes. Thrust faults are low angle reverse faults. In California, the regions listed are the northern California coast, the Coast Ranges of central California, and the western Transverse Ranges. The 1994 Northridge earthquake and the 1971 San Fernando Valley earthquake are related to the western Transverse Ranges. There is no indication of reverse-fault earthquakes in the South Coast Borderland where SONGS is located.

In southern California, the mountain ranges flanking the ''Big Bend'' of the San Andreas fault (the Transverse Ranges) strike east-west and are bounded on the south by north-dipping range-front reverse faults, part of a discontinuous system of faults that extends from the Santa Barbara Channel eastward to the eastern end of the San Gabriel Mountains. Other important reverse faults in this region include the Pleito fault in the southern margin of the South San Joaquin Basin; the south-dipping Oak Ridge fault in the Ventura Basin which extends eastward to the San Fernando Valley as a blind thrust that produced the 1994 Northridge

[20] Id.

[21] J. A. Rial, ''The Anomalous Seismic Response of the Ground Motion at the Tarzana Hill Site During the Northridge 1994 Southern California Earthquake: A Resonant, Sliding Block?'' Bulletin of the Seismological Society of America, 86, 1714–1723 (1996).

[22] A. M. Shakal, M. Huang, and T. Cao, ''The Whittier Narrows, California, Earthquake of October 1, 1987: CSMIP Strong Motion Data,'' Earthquake Spectra, 4 75–100 (1988).

[23] R. D. Catchings and W. H. K. Lee, ''Shallow Velocity Structure and Poisson's Ratio at the Tarzana, California Strong-Motion Accelerometer Site,'' Bulletin of the Seismological Society of America, 86 1704–1713; Rial, loc. cit.; Paul Spudich, Margaret Hellweg, and W. H. K. Lee, ''Directional Topographic Site Response at Tarzana Observed in Aftershocks of the 1994 Northridge, California, Earthquake: Implications for Mainshock Motions,'' Bulletin of the Seismological Society of America, 86, S193–S208 (1996).

[24] Paul Somerville, Chandan Saikia, David Wald, and Rover Graves, ''Implications of the Northridge Earthquake for Strong Ground Motions from Thrust Faults,'' Bulletin of the Seismological Society of America, 86 S115–S125 (1996).

[25] Robert S. Yeats, Kerry Sieh, and Clarence R. Allen, The Geology of Earthquakes, Oxford University Press, Oxford, England (1997).

earthquake; and a blind reverse-fault system beneath the Santa Monica Mountains North of the Los Angeles basin. Major earthquakes generated by these reverse faults include the 1952 Kern County earthquake in the South San Joaquin Valley (M_S 7.7), the 1971 San Fernando earthquake at the eastern edge of the Ventura basin (M_W 6.7), the 1978 Santa Barbara earthquake in the western Ventura basin (M_L 5.9), the 1987 Whittier Narrows earthquake in the Los Angeles basin (M_L 5.9), the 1991 Sierra Madre earthquake at the southern edge of the San Gabriel Mountains northeast of Los Angeles (M_L 6.0), and the 1994 Northridge earthquake in the San Fernando Valley (M_L 6.7). Of these, only the 1952 and 1971 earthquakes produced surface rupture. Global Positioning System satellite geodesy confirms the high convergence rate as a result of reverse slip on these faults,[26] indicating this is an active thrust fault area. These indications were not seen in the SONGS area.

To state that the Northridge earthquake occurred on a blind fault that had not been mapped or assessed is an oversimplification. Blind thrust faults are recognized as significant sources of seismic hazard in areas of active folding, and the Transverse Ranges-Los Angeles basin has long been recognized as such an area. If, before the Northridge earthquake, such a fault had been sought as part of a siting investigation, it or the active folding indicative of such a fault would have been found and would have been considered in the seismic hazard estimate. In addition, the potential occurrence of a M_W 6.5 to 7 on a buried fault has been assumed in the commercial design and construction codes for the area where the Northridge earthquake occurred, so in effect, the potential for blind faults has been accounted for.

The types of site investigations, borehole drilling, and seismic survey profiles normally performed for critical facilities such as nuclear power plants are not used for normal residential or commercial structures because of the high costs of such work. For residences or commercial buildings, the codes rely on more generalized hazard estimates, such as those found in Petersen et al.[27] These hazard studies incorporate all the known geologic information in their ground motion estimates.

The most promising new data for the identification of areas of potential buried thrust faults comes from geodetic measurements of the satellite-based Global Positioning System, which is capable of determining convergence rates across folded terranes. Geomorphic studies are important in that the deformation of late Quaternary stream or coastal terraces provides quantitative data on the uplift rates or lack of uplift of postulated active folds over buried faults. In fact, the locale of the 1987 Whittier Narrows, California, earthquake was identified more than 70 years ago[28] as an active anticline on the basis of warped geomorphic surfaces.

The SONGS site lies in a relatively stable structural block bounded by major northwest-southeast trending strike-slip faults. The relative motion between the Pacific plate and the North American plate is accommodated, in part, by dextral strike slip along the San Andreas fault system and faults in the borderlands, extension in the Gulf of California, and contraction in the Transverse Ranges and the Los Angeles basin region.[29]

The tectonic setting of the SONGS site is significantly different from the complex regime of the Transverse Ranges and the Los Angeles basin. This difference is reflected in the higher seismicity in the Transverse Range and the Los Angeles basin than in the SONGS site area. The presence or absence of blind thrust faults in a region is indicated by the presence or absence of significant uplift and folding of late Quaternary period deposits and geomorphic surfaces[30] as evidenced in the Transverse Ranges and the Los Angeles basin region. Mapping of marine terraces along the western flank of the San Joaquin Hills to the north of the SONGS site indicates a uniform uplift rate for the past 80 to 120 thousand years.[31] Lajoie et al.[32] reported on the coastal region between San Onofre Bluff and Torrey Pines north of Soledad Mountain in San Diego and noted that there has been no significant crustal tilt perpendicular to the coastline during much of the Quaternary Period. There is also no indication from the marine terrace studies of significant tilt parallel to the coastline during much of the Quaternary Period. The marine terrace data, along with other geological mapping and geophysical surveys, have not identified geologically young folds or blind thrust faults in the SONGS site vicinity. The closest capable fault to the site is the OZD 8 kilometers from the site, and it is the postulated earthquake on this fault that dominates the seismic hazard at SONGS. Therefore, the statement that the Northridge earthquake occurred on a blind fault that had not been mapped or assessed, and the implication that such a condition could also exist at the SONGS site, are not valid.

The Landers magnitude M_W 7.3 earthquake of June 28, 1992, was in the Eastern California Shear Zone (ECSZ) approximately 140 kilometers from the SONGS site. The ECSZ is a complex zone of predominantly right lateral strike-slip faulting. The earthquake was caused by strike-slip faulting on five fault segments with a total rupture length of about 70 kilometers.[33]

Campbell and Bozorgnia[34] used 167 accelerograms recorded during the Landers earthquake to study the ground motions from this event. A comparison of these recordings with ground motions predicted by contemporary attenuation relationships indicated that relationships developed before the Landers earthquake made a reasonable prediction of the Landers ground motions within 60 kilometers of the fault, and relationships developed after

[26] Id.

[27] Mark D. Peterson, *et al.*, *supra* note 15.

[28] F.F. Vickery, ''The Interpretation of the Physiography of the Los Angeles Coastal Belt,'' Bulletin of the American Association of Petroleum Geologists, 11, 417–424 (1927).

[29] M.L. Zoback and R.E. Anderson, ''Cenozoic Evolution of the State of Stress and Style of Tectonism in Western United States,'' Philosophical Transactions of the Royal Society of London, 300, 407–434 (1981); R. Weldon and E. Humphreys, ''A Kinematic Model of Southern California,'' Tectonics, 5, 38–48 (1986); D.F. Argus and R.G. Gordon, ''Sierra Nevada-North America Motion From VLBI and Paleomagnetic Data—Implications for the Kinematics of the Basin and Range, Colorado Plateau, and California Coast Ranges,'' EOS Transactions, American Geophysical Union, 69, 1418 (1988); R.S. Stein and R.S. Yeats, ''Hidden Earthquakes,'' Scientific American, 260, 48–57 (1989).

[30] Stein and Yeats, *supra* notes 25 and 29.

[31] D.T. Barrie, T. Totnall, and E. Gath, ''Neotectonic Uplift and Ages of Pleistocene Marine Terraces, San Joaquin Hills, Orange County, California,'' in E.G. Heath and W.L. Lewis (editors), The Regressive Pleistocene Shoreline Coastal Southern California, South Coast Geological Society, Inc., 1992 Annual Field Trip Guide Book No. 20, 115–122 (1992).

[32] K.R Lajoie, D.J. Ponti, C.L. Powell, II, S.A. Mathieson, and A.M. Sarna-Wojcicki, ''Emergent Marine Strandlines and Associated Sediments, Coastal California; a Record of Quaternary Sea-Level Fluctuations, Vertical Tectonic Movements, Climatic Changes, and Coastal Processes,'' in E.G. Heath and W.L. Lewis (editors), The Regressive Pleistocene Shoreline Coastal Southern California, South Coast Geological Society, Inc., 1992 Annual Field Trip Guide Book No. 20, 81–104 (1992).

[33] Yeats, et al., *supra* note 25.

[34] K.W. Campbell and Y. Bozorgnia, ''Empirical Analysis of Strong Ground Motion from the 1992 Landers, California, Earthquake,'' Bulletin of the Seismological Society of America, 84, 573–588 (1997).

the Landers earthquake did a reasonably good job of predicting the Landers ground motions within the distance ranges for which they were applicable. This information shows that there was nothing extraordinary about the ground motions from the Landers earthquake that would challenge the adequacy of the near field ground motion estimates made for the SONGS SSE. To demonstrate the adequacy of the SONGS SSE ground motion, Figure 3 contains a plot of the SSE response spectrum and the 84th percentile response spectra obtained from the four recent earthquake ground motion attenuation relationships to estimate the ground motion for a magnitude M_W 7 earthquake at a distance of 8 kilometers. The SONGS response spectrum envelopes the response spectra of all four relationships at all frequencies.

To address the issue of the 20 feet (6 meters) of fault displacement as a result of the Landers earthquake, the staff has reviewed the work of researchers on this subject. Post-earthquake investigations have found that slip on the Landers earthquake faults was extremely heterogeneous both along strike and down dip. The magnitude of the horizontal offset varied along the fault trace, but was typically 2 to 3 meters with maximum strike-slip offset of about 6 meters.[35] This offset is not unusual and is within the range of offsets for an earthquake of this size.[36] The U.S. Geological Survey, with NRC sponsorship, has conducted paleoseismic studies of the fault segments that ruptured during the Landers earthquake. Trenches across the faults provide clear evidence of the two most recent pre-1992 surface faulting events. The most recent faulting, Holocene age, has displacements essentially the same as the 1992 event. Evidence from the trenches also indicates that the segments that ruptured during the 1992 event had ruptured during the previous events.[37] If, before the Landers earthquake, these faults had been subjected to the type of investigations that nuclear power plant sites undergo, the earthquake and fault rupture potential would have been identified.

There are no faults at the SONGS site capable of surface offset. The fault nearest to the SONGS site capable of significant surface offset is the OZD, which is 8 kilometers from the site. Assuming that there were to be offsets on the order of 6 meters or more on the OZD, they would have no detrimental effect on SONGS because of the distance of the fault, the orientation of the fault, and the potential ground motion to which the plant is designed.

With respect to the Petitioner's statement that scientists are not able to provide the information to evaluate the situation, the staff notes that numerous papers have been published in the scientific literature and presentations made at national and international scientific meetings on these two earthquakes. In addition, the Seismological Society of America has devoted one issue of its Bulletin[38] to the Northridge earthquake and another issue to the Landers earthquake.[39] The information about these events is understood and is widely distributed in the professional community.

4. Concern About ''Seismic Analysis Uncertainties''

In the enclosure to his letter dated December 10, 1996, the Petitioner provided a list of 10 seismic analysis uncertainties[40] and implies that these must be addressed because new surprises will occur with each event.

The Petitioner appears to have compiled a list of uncertainties in estimating seismic hazard from the Petersen paper.[41] There is nothing unique about this list. These are the types of issues a geologist or a seismologist performing earthquake hazard investigations must routinely confront. They are among the points that the NRC Seismic and Geologic Siting Criteria for Nuclear Power Plants and the NRC SRP were developed to address.

The geologic and seismic investigations and reviews that were performed for the licensing of SONGS Units 2 and 3 were deterministic in nature. In the deterministic method, the uncertainties were not explicitly quantified. Rather, a multi-method approach with sensitivity studies was used. For instance, to determine the maximum magnitude estimate for a fault empirical relationship, such as magnitude as a function of the parameters slip rate, the fault length, the rupture length per event, the rupture area, and the historical seismicity were used. Also, various fault segmentation models were used in magnitude estimates. To determine the ground motion from a magnitude 7 earthquake at a distance of 8 kilometers, attenuation relationships from the statistical analysis of empirical ground motion data, theoretical numerical modeling studies, and the response spectra from magnitude 6.5 and larger earthquakes recorded at distances of 13 kilometers and less were used. The SSE for the SONGS site enveloped all of these estimates. The geology in the site region was investigated by geologic mapping, excavation of faults, offshore and onshore seismic reflection profiles, onshore refraction profiles, geophysical surveys, drill holes, well logs, trenching, geomorphic surveys, and geodetic studies. The information from these various studies was analyzed by experienced professional geologists and geophysicists, and the site characteristics were thus developed in a conservative manner. Independent studies and reviews were performed by the NRC staff, the U.S. Geologic Survey, the National Oceanic and Atmospheric Adminstration, and the Advisory Committee on Reactor Safeguards. These studies and reviews confirmed the licensee's determinations.

The uncertainties in seismic hazard estimates can be addressed quantitatively through a probabilistic seismic hazard analysis. In 1991, the NRC issued Supplement 4 to Generic Letter 80–20 requesting licensees of nuclear power plants to perform an IPEEE to identify plant-specific vulnerabilities to severe accidents. Among the events to be assessed were earthquakes, internal fires, high winds and tornadoes, external floods, and transportation and nearby facility accidents. As part of the SONGS IPEEE

[35] Carlos Lazarte, Jonathan D. Bray, Arvid M. Johnson, and Robert E. Lemmer, ''Surface Breakage of the 1992 Landers Earthquake and Its Effects on Structures,'' Bulletin of the Seismological Society of America, 84, 547–561 (1994).

[36] Donald L. Wells and Kevin J. Coppersmith, ''New Empirical Relationships Among Magnitude, Rupture Length, Rupture Width, Rupture Area, and Surface Displacement,'' Bulletin of the Seismological Society of America, 84, 974–1002 (1994).

[37] David P. Schwartz. Personal communication with Dr. Robert Rothman, of the NRC staff, June 1997. Dr. Schwartz is a senior geologist employed by the U.S. Geological Survey in Menlo Park, California and a international authority on paleoseismology.

[38] Bulletin of the Seismological Society of America, Volume 86, Number 1, Part B Supplement, February 1996.

[39] Bulletin of the Seismological Society of America, Volume 84, Number 3, June 1994.

[40] List of Seismic Analysis Uncertainties: (1) How to quantify slip rates and maximum magnitudes along with their uncertainties for all fault sources. (2) How to incorporate blind thrusts with appropriate weighting. (3) What seismogenic zone widths to use for various fault zones. (4) Which magnitude distributions are most appropriate for various faults. (5) How to incorporate background seismicity and which ''b'' value is most appropriate for exponentially distributed earthquakes. (6) Whether to use source zones or simple point sources in modelling background seismicity. (7) Which alternative segmentation models are viable (including alternative cascades models for ''A'' zones). (8) How to incorporate geodetic data directly in the model. (9) Which attenuation relations are most appropriate and how to model ground motion from large (M>8) earthquakes. (10) How to resolve the discrepancy between the rate of earthquakes in this and other seismic hazard models and the historic earthquake record (especially in the Transverse Ranges).

[41] Peterson, *et al., supra* note 15.

program, a state-of-the-art probabilistic seismic hazard analysis was performed. In response to an NRC request for information, Southern California Edison submitted its contractor's final report on the seismic hazard study.[42] In the seismic hazard study, ground motion exceedance probabilities were calculated using hypotheses about the causes and characteristics of earthquakes in the region. Scientific uncertainty about the causes of earthquakes and about the physical characteristics of potentially active tectonic features lead to uncertainty in the inputs to the seismic hazard calculations. These uncertainties were quantified using the tectonic interpretations developed by earth scientists knowledgeable about the region. These experts evaluated the likelihood associated with alternative tectonic features and with alternative characteristics of these potential sources. These and other uncertainties were propagated through the entire analysis. The result of the analysis is a spectrum of hazard curves and their associated weights. These curves quantify the seismic hazard at the site and its uncertainty.

The major components of the probabilistic seismic hazard analysis are the identification of the seismic sources, the determination of the earthquake magnitude distribution and rate of occurrence for each source, the estimation of the ground motion, and the incorporation of these factors by the probability analysis into the hazard curves. The Risk Engineering, Inc., report[43] more than adequately demonstrates how the uncertainties of the type the Petitioner listed in the enclosure to his letter were addressed. The comparison of the probabilistic seismic hazard results to the SSE indicates that the SSE response spectrum has an annual probability of being exceeded in the range of 5×10^{-6} to 4×10^{-4}, depending on the frequency. This estimate is similar to the probabilistic hazard estimates for other critical facilities in the western United States. The low frequency of exceedance of the SSE ground motion provides further assurance that the licensing basis for SONGS provides adequate protection of the health and safety of the public.

5. Concern About the Failure of Welded-Steel Frames in Commercial Buildings During the Northridge Earthquake

In an e-mail message to Dr. Shirley Jackson,[44] the Petitioner stated—

> The breaking of welds in steel buildings in the San Fernando Valley is a warning that all sorts of steel welds and fittings are vulnerable. The number of such welds and fittings at SONGS is almost uncountable, and it's therefore unrealistic to believe that they will all be undamaged or broken at forces far below the Design Basis Event of 67%g.

It appears that the Petitioner is referring to the failure of welded-steel moment-resisting frames (WSMFs) in high-rise residential and commercial buildings during the 1994 Northridge earthquake. Following the Northridge earthquake, inspections of many otherwise intact buildings indicated structural damage to WSMFs. The WSMFs were specifically designed on the basis of the assumption that they would be capable of extensive yielding and plastic deformation. The deformation was assumed to be accomplished by the yielding of plastic hinges in the beams at their connections to the columns. Damage was expected to consist of moderate yielding at the connections and localized buckling of the steel elements. However, contrary to the design assumption, the WSMF failures were brittle fractures with unanticipated deformations in girders, cracking in column panel zones, and fractures in beam-to-column weld connections. A number of factors related to seismic analysis and design, materials, fabrication, and construction have been identified as contributing to the failure of the WSMFs and are the focus of research projects sponsored by the Federal Emergency Management Agency.[45]

The method of computing seismic loads, their combination with other non-seismic loads, the acceptance criteria, and the quality assurance requirements for nuclear power plants are significantly more conservative than those for non-nuclear buildings designed using building codes for residential or commercial structures. For nuclear power plants, two levels of ground motion, based on very conservative siting criteria, are determined for designing the safety-related structures, systems, and components. For the lower level of vibratory motion, the operating-basis earthquake,[46] the load factors, and acceptable allowable stresses ensure that the stresses in plant structures remain at least 40 percent below the yield stress of the material. For the higher level vibratory motion, the SSE, the associated load factors, and allowable stresses ensure that the stresses in steel structures do not exceed the yield stress of the material. The NRC staff design review guidance specified in SRP Section 3.7.2 does not accept the use of inelastic deformation of any steel member or connection in nuclear power plants for design-basis seismic events. Also, the use of broadband design response spectra, conservatively defined structural damping values, consideration of amplified forces at higher elevations in the plants, and consideration of all three components of the design-basis vibratory motion in the dynamic analysis ensure that the loads and load paths of the seismic events are properly considered in the design, as opposed to the use of static shear forces in non-nuclear structures. For these reasons, the failure of WSMFs in residential and commercial buildings as a result of the Northridge earthquake is not relevant to nuclear power plants.

On the basis of its review of the Petitioner's request that the SONGS units be shutdown due to inadequate protection against potential earthquake ground motion, the staff has concluded that the Petitioner has not presented a basis for such an action.

III. Conclusion

On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised by the Petitioner that would require taking the action requested by the Petitioner. As explained above, the SONGS site has undergone extensive geologic, geophysical, geotechnical, and seismic investigations and reviews, including a recent analysis to quantify the seismic hazard and uncertainties for the SONGS site. Furthermore, SONGS was licensed consistent with the seismic and geologic siting criteria for nuclear power plants set forth in 10 CFR Part 100, Appendix A. The Petitioner has not provided any information in support of his concerns and requested actions, including information regarding recent earthquakes, which the NRC staff was not already aware. Accordingly, the Petitioner's requested action, pursuant to Section 2.206, is denied.

A copy of this Decision will be filed with the Secretary of the Commission

[42] Risk Engineering, Inc., ''Seismic Hazard at San Onofre Nuclear Generating Station, ''Prepared for Southern California Edison Co., Final Report (1995).

[43] Id.

[44] Stephen Dwyer, e-mail message to Dr. Shirley Jackson, Subject: 2.206 Petition Re: SONGS Seismic Hazards, dated May 28, 1997.

[45] FEMA 267, ''Interim Guidelines: Evaluation, Repair, Modification and Design of Welded Steel Moment Frame Structures, Program to Reduce the Earthquake Hazards of Steel Moment Frame Structures,'' Federal Emergency Management Agency, Washington, DC (1995).

[46] See 10 CFR Part 100, Appendix A, III(d).

for the Commission to review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 19th day of September 1997.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

BILLING CODE 7690–01–P

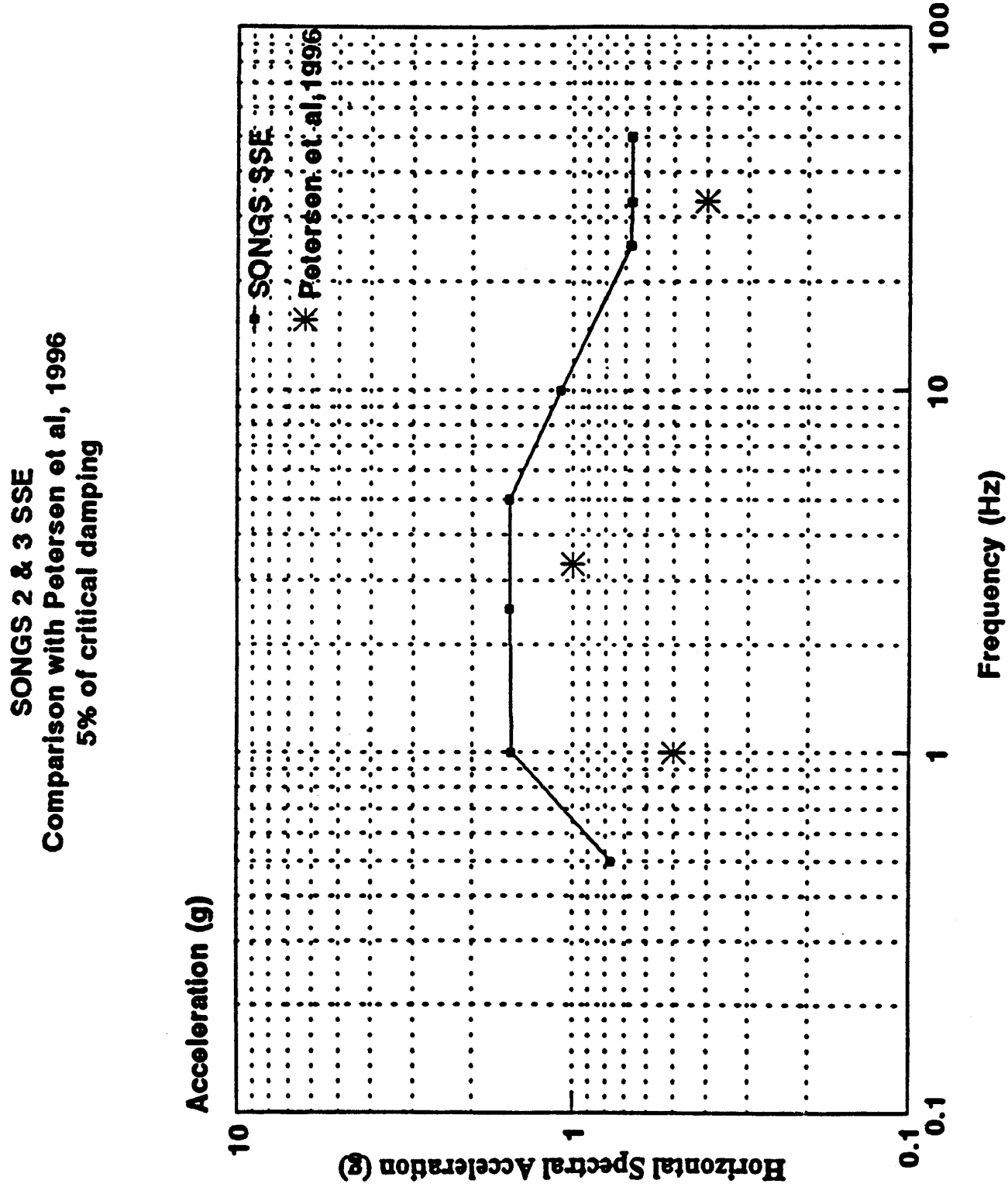
SONGS 2 & 3 SSE
Comparison with Petersen et al, 1996
5% of critical damping
SONGS SSE
Petersen et al, 1996
Acceleration (g)
Horizontal Spectral Acceleration (g)
Frequency (Hz)
10
1
0.1
0.1
1
10
100

Figure 1

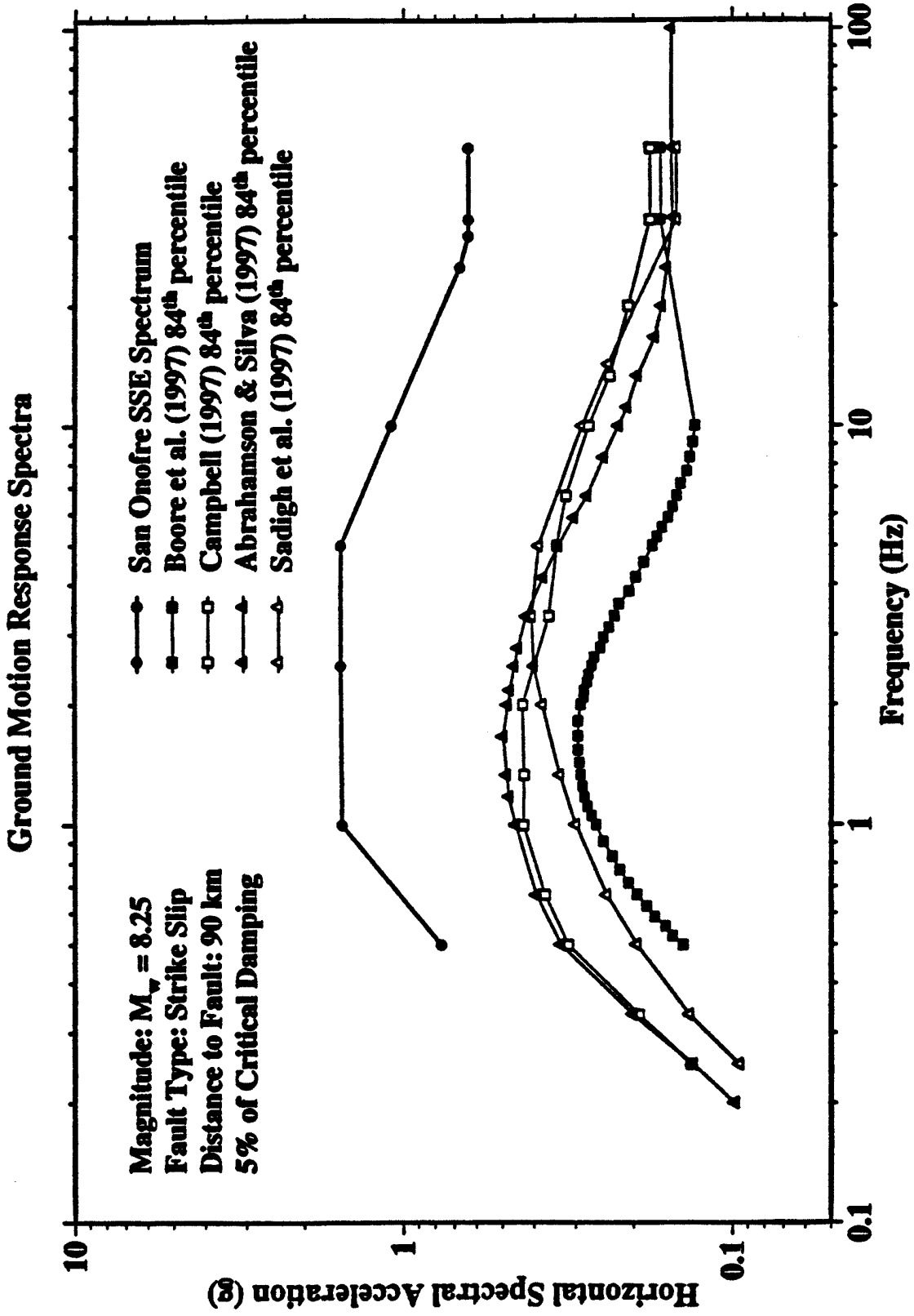
Ground Motion Response Spectra
Magnitude: M_w = 8.25
Fault Type: Strike Slip
Distance to Fault: 90 km
5% of Critical Damping
San Onofre SSE Spectrum
Boore et al. (1997) 84th percentile
Campbell (1997) 84th percentile
Abrahamson & Silva (1997) 84th percentile
Sadigh et al. (1997) 84th percentile
Horizontal Spectral Acceleration (g)
10
1
0.1
0.1
1
10
100
Frequency (Hz)

Figure 2

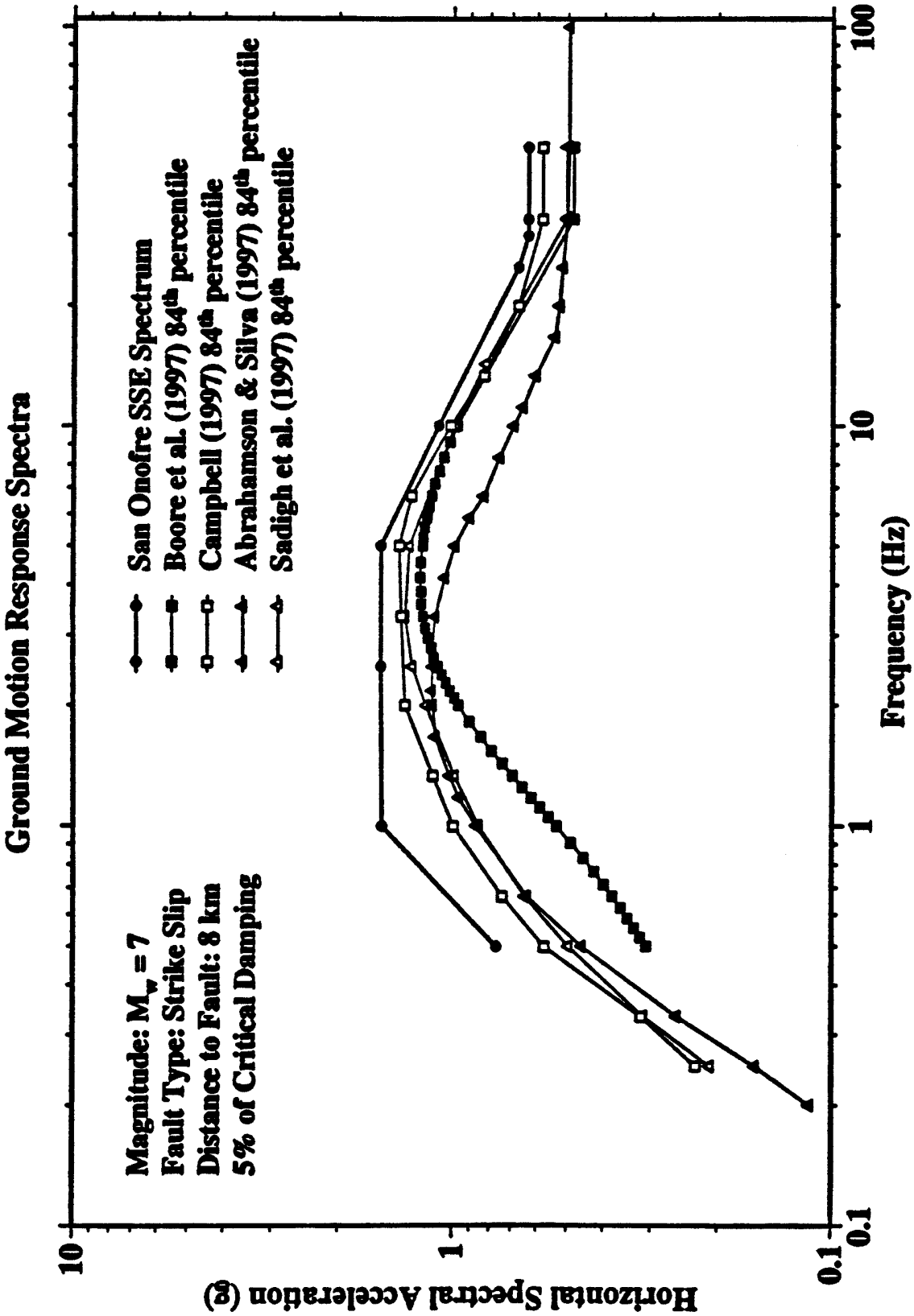

Figure 3

[FR Doc. 97–25632 Filed 9–25–97; 8:45 am]
BILLING CODE 7690–01–C

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–115, Representative Payee Survey, is designed to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 12,000 RI 38–115 forms will be completed annually. This form takes approximately 20 minutes to complete. The annual burden is 4,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before November 25, 1997.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance.

Acting Director.

[FR Doc. 97–25614 Filed 9–25–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the fifty-second meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting, the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: October 14, 1997, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7310 (formerly 7B09), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–25507 Filed 9–25–97; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Evidence of coverage Under An Employer Group Health Plan.

(2) *Form(s) submitted:* RL–311–F.

(3) *OMB Number:* 3220–0189.

(4) *Expiration date of current OMB clearance:* November 30, 1997.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for profit.

(7) *Estimated annual number of respondents:* 1,000.

(8) *Total annual responses:* 1,000.

(9) *Total annual reporting hours:* 167.

(10) *Collection description:* The collection obtains information from railroad employers which is needed to determine if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplemental medical insurance under Medicare.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–25661 Filed 9–25–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 206(4)–2, SEC File No. 270–217, OMB Control No. 3235–0241; Rule 02 and Forms 4–R, 5–R, 6–R, and 7–R, SEC File No. 270–214, OMB Control No. 3235–0240; Rule 203–2 and Form ADV–W, SEC File No. 270–40; OMB Control No. 3235–0313.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 206(4)–2 governs the custody or possession of funds or securities by Commission-registered investment advisers. Rule 206(4)–2 makes it a fraudulent, deceptive or manipulative act, practice or course of business for any investment adviser who has custody or possession of funds or securities of its clients to do any act or take any action with respect to any such funds or securities unless: (1) The securities are properly segregated and safely kept; (2) the funds are held in one or more specially designated client accounts with the adviser named as trustee; (3) the adviser promptly notifies the client as to the place and manner of safekeeping; (4) the adviser sends a detailed written statement to each client at least once every three months; and (5) at least once each year, on an unannounced basis, an independent public accountant verifies by actual examination the clients' funds and securities and files a certificate with the Commission describing the examination. The rule does not apply to an investment adviser that is also

registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''), provided the adviser is in compliance with Rule 15c3–1 under the Exchange Act, or, if a member of an exchange, in compliance with exchange requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of the customer.

The information required by Rule 206(4)–2 is used by the Commission in connection with its investment adviser inspection program to ensure that advisers are in compliance with Rule 206(4)–2. The information required by paragraphs (3) and (4) of the rule is also used by clients. Without the information collected under the rule, the Commission would be less efficient and effective in its inspection program and clients would not have information valuable for monitoring the adviser's handling of their accounts.

The Commission recently adopted amendments to the rule to restrict the application of the rule to those advisers registered with the Commission. The likely respondents to this information collection are those investment advisers that are registered with the Commission after July 8, 1997, are not also registered as broker-dealers, and have custody of clients' funds or securities. The Commission estimates that 111 advisers would be subject to Rule 206(4)–2. The number of responses under Rule 206(4)–2 will vary considerably depending on the number of clients for which an adviser has custody or possession of funds or securities. It is estimated that an adviser subject to this rule would be required to provide an average of 250 responses annually at an average of .5 hours per response. The total annual burden for each respondent is estimated to be 125 hours. The total annual aggregate burden for all respondents is estimated to be 13,875 hours.

Rule 0–2 requires certain non-resident persons to furnish to the Commission a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. Regulation 279.4, 279.5, 279.6, and 279.7 [17 CFR 279.4, 279.5, 279.6, and 279.7] designate Forms 4–R, 5–R, 6–R, and 7–R as the irrevocable appointments of agent for service of process, pleadings and other papers to be filed by an individual non-resident adviser or an unincorporated nonresident investment adviser, a partnership nonresident investment adviser, or a nonresident general partner of an investment adviser or a nonresident ''managing agent'' of an unincorporated investment adviser, respectively, which is registered or applying for registration with the Commission as an investment adviser.

It is necessary to obtain the appropriate consent to ensure that the Commission and other persons can institute injunctive actions against nonresident investment advisers and non-resident partners or managers of investment advisers in cases involving violation of the Investment Advisers Act of 1940 (''Advisers Act'') that may result in civil liabilities.

The Commission estimates that there may be an increase in the number of non-resident registered investment advisers, which may be offset by those non-resident general partners or non-resident managing agents of investment advisers that would not register or be registered with the Commission after July 8, 1997 who would no be subject to the Rule 0–2 or the forms.[1] Therefore, non-resident general partners or non-resident managing agents of investment advisers that would be registered with the states after the July 8, 1997 effective date would no longer be subject to Rule 0–2 or be required to file the forms.

The Commission estimates that there would be approximately 300 registrants subject to Rule 0–2. An adviser subject to this rule would be required to file only once, and the Commission estimates that the preparation and filing of any of the forms designated for use pursuant to Rule 0–2 would require approximately one hour of the registrant's time. The total annual burden would be 300 hours.

Rule 203–2 governs withdrawal from registration under the Advisers Act and Form ADV–W is the form for withdrawing registration under the Advisers Act.

To enforce the registration provisions of the Advisers Act and to fulfill its responsibilities under Section 203(h), the Commission must obtain certain information from persons seeking to withdraw from registration. The information required by Form ADV–W enables the Commission to satisfy itself that the activities of person seeking to withdraw from registration do not require such person to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. Such terms and conditions might include the making of appropriate arrangements with respect to the transfer to clients of client funds and securities in the custody and possession of the adviser or the return to clients of prepaid advisory fees.

After July 8, 1997 (effective date of the Coordination Act), the Commission estimates that only 28 percent of investment advisers currently registered with the Commission will remain eligible for Commission registration. It is estimated that approximately 616 advisers will be withdrawing their registration from the Commission by filing Form ADV–W. The total annual burden for each respondent is estimated to be one hour. The annual aggregate burden for all respondents is estimated to be 616 hours.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 19, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25604 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[1] On October 11, 1996, President Clinton signed into law the National Securities Markets Improvement Act of 1996 (''1996 Act''). Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act (''Coordination Act''), amended the Investment Advisers Act of 1940 to, among other things, reallocate the responsibilities for regulating investment advisers between the Commission and the securities regulatory authorities of the states.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39100; File No. SR–CBOE–97–41]

Self-Regulatory Organizations; Proposed Rule Change By Chicago Board Options Exchange, Incorporated Relating to the Definition of Stop Orders

September 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

25, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE or Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to amend its Rule 6.53 (''Rule'') governing the definition of stop orders to clarify that a stop order on the CBOE is triggered when the option contract reaches a specified price ''on the CBOE floor.'' The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to amend the definition of a stop order to clarify that the stop order becomes triggered when the option contract reaches a specified price ''on the CBOE floor.''

Currently, paragraph (c)(iii) of Exchange Rule 6.53 defines a stop order as a contingency order to buy or sell when the market for a particular option contract reaches a specified price. The Rule does not specify, but has always been interpreted to mean, that the contingency to buy or sell is satisfied when the option contract is bid at or above the stop price (in the case of a by order) or is offered at or below the stop price (in the case of a sell order) ''on the floor of the CBOE.'' The proposed amendment will make it clear, therefore, that a stop order is not activated when the bid or offer (as appropriate) reaches the stop limit on another exchange.

Unlike the equity markets, the option markets are not electronically linked to each other. Thus, options traders have no way of knowing whether a contract has reached a specified ''stop'' in another market place, as would an equity securities trader. Accordingly, there is no rule prohibiting trade-throughs in options market places as there is in the equity market places.

The CBOE believes that the proposed rule change will clarify the CBOE's responsibility in this regard, and will prevent any perception that CBOE members have a duty to execute stop orders when the ''stop'' price has not been reached on the CBOE floor.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to protect and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. By clarifying the definition of a ''stop order,'' the proposed rule change will more accurately describe the obligations of CBOE members with regard to stop orders executed on the Exchange. Therefore, the Exchange believes that amending the rule is consistent with, and furthers, the objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to adtermine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR–CBOE–97–41 and should be submitted by October 17, 1997.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25518 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39105; File No. SR–CSE–97–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Minor Rule Plan Violations

September 22, 1997.

On August 5, 1997, The Cincinnati Stock Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change pursuant to Section 19(b)(1)

[3] 17 CFR 200.30–3(a)(12).

of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder.[3] Notice of the proposed rule change, together with the substance of the proposal, was published in the **Federal Register**.[4] No comment letters were received. This order approves the proposed rule change, as amended.

I. Background

Exchange Rule 8.14 provides the Minor Rule Violation Program (''Program'') as an alternative disciplinary regime to violations of Exchange Rules that the Exchange determines are of a minor nature. The Program provides the Exchange with the ability, but not the obligation, to impose a fine, not to exceed $2500, on any member the Exchange determines has violated a rule subject to the Program. Section (e) of Exchange Rule 8.14 requires the Exchange from time to time to prepare a list of minor rule violations. Adding a particular rule violation to the Program does not limit the Exchange's ability to treat violations of those rules through more formal disciplinary measures. The Program simply provides the Exchange with greater flexibility in addressing rule violations appropriately.

As part of its ongoing effort to improve its regulatory program, the Exchange has determined that certain rule violations should be added to the Program. The Program currently includes the requirements of Exchange Rules 4.1 and 4.2, concerning books and records, to submit trade data to the Exchange. The proposed rule change will clarify that a member also must provide financial and regulatory records in accordance with Rule 4.2 and Interpretations thereunder as well as trade-related information. The proposed rule change also will add Exchange Rule 11.9(c) to the Program. Exchange Rule 11.9(c) requires Designated Dealers, the Exchange's multiple, competing specialists, to maintain continuous quotations throughout the trading day.

II. Discussion

The Commission finds that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(7) in particular because it provides a fair procedure for the disciplining of members and persons associated with members in that the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor rule violations.[5] The Commission believes the proposed rule change will enable the Exchange to address appropriate minor rule violations promptly and efficiently through the minor rule procedures, without the need to initiate formal disciplinary proceedings.

Furthermore, the Commission believes that proposed rule change is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because the proposed rule change will help the Exchange ensure compliance with its quotation requirements and spread parameters, which will enhance the value of quotations made by the Exchange's multiple, competing specialists.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–CSE–97–07, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25606 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] The proposed rule change was originally submitted on June 24, 1997. The CSE subsequently submitted Amendment No. 1 which altered minor technical language in Item II. Letter from Adam W. Gurwitz, Vice President Legal and Secretary, CSE, to Karl J. Varner, Esq., SEC, dated August 4, 1997. This proposed rule change replaces SR–CSE–97–06, which has been withdrawn. Letter from Adam W. Gurwitz, Vice President Legal and Secretary, CSE, to Katherine England, Assistant Director, SEC, dated June 23, 1997.

[4] Securities Exchange Act Release No. 38922 (August 11, 1997), 62 FR 44024 (August 18, 1997).

[5] The Commission has considered the effect of the proposed rule change on the promotion of efficiency, competition and capital formation. 15 U.S.C. 78(c).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39103; File No. SR–MBSCC–97–5]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Participant Liability for Transactions Submitted on Behalf of Nonparticipants

September 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on August 1, 1997, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MBSCC–97–5) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. 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 proposed rule change will clarify that participants will be liable as principal for any contracts or other transactions submitted to MBSCC on behalf of entities that are not participants (''nonparticipants'') and that nonparticipants will not be deemed to possess any rights or benefits of participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, MBSCC's rules state that participants that process any contracts or other transactions through MBSCC for other participants are liable as principal for such contracts or transactions. However, it has always been MBSCC's intention that participants be principally liable whether they submit a contract or transaction on behalf of other participants or nonparticipants. Thus, the proposed rule change will clarify that participants will be liable as principal for any contracts or other transactions processed, compared, settled, or carried out on behalf of nonparticipants. In addition, the proposed rule change states that such nonparticipants will not be deemed to possess any of the rights or benefits of participants.

[1] 15 U.S.C. 78s(b)(i).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

MBSCC believes that the proposed rule change will further protect MBSCC in the event a participant fails to discharge its liabilities. In this respect, MBSCC will treat all of a participant's accounts [3] and obligations as belonging to such participant regardless of the identity of the original underlying party. In addition, MBSCC believes that the proposed rule change will remove any doubt that a participant's participant fund [4] deposits will be available for all of the participant's transactions regardless of the source. Furthermore, MBSCC believes that this proposed rule change will foreclose any attempt by a nonparticipant to assert a claim against MBSCC with respect to a trade.

MBSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations promulgated thereunder in that it will enhance MBSCC's ability to protect itself and its participants against loss.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBSCC has not solicited or received comments relating to the proposed rule change. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so findings or (ii) as to which MBSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspections and copying at the principal office of MBSCC. All submissions should refer to the File No. SR–MBSCC–97–5 and should be submitted by October 17, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25519 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[3] According to MBSCC's rules, the term account generally means any account maintained by MBSCC on behalf of a participant for the comparison, margining, and clearing of trades.

[4] According to MBSCC's rules, the term ''participant fund'' means the fund for which provision is made in Article IV to which participants are required to make basic deposits, minimum market margin differential deposits, and market margin differential deposits.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39104; File No. SR–OCC–97–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Permitting the Use of Certain Fund Shares to Satisfy Margin Requirements and Permitting the Use of Certain Fund Shares and Trust Units as Escrow Deposits

September 22, 1997.

On February 21, 1997, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–97–01) 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 May 20, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

(1) Using Fund Shares as a Form of Margin

The proposal amends subparagraph (4) of OCC Rule 604(d), which sets forth the margin deposit eligibility requirements for debt and equity issues, to permit OCC's clearing members to deposit as a form of margin collateral fund shares issued by open-end management investment companies that hold portfolios or baskets of common stocks (''fund shares'').[3] The proposal amends the term ''stock'' defined Rule 604(d)(4) to include fund shares. Fund shares will have to meet the requirements applicable to stocks under Rule 604(d) and be of a class approved by OCC for deposit as margin to be eligible for deposit as margin collateral. Because Rule 604(d)(1) requires that a stock be exchange listed or traded on the NASDAQ National Market System, the ''publicly traded'' requirement of subparagraph (4) has been deleted. The proposal also amends Section 11 of OCC's Interpretations and Policies to require that OCC's Membership/Margin Committee (''Committee'') approve classes of fund shares for deposit as margin. Presently, World Equity Benchmark Shares (''WEBS'') listed on the American Stock Exchange are the only class of fund shares the Committee has approved.

(2) Using Fund Shares and Trust Units as Escrow Deposits

The proposal amends OCC Rule 1801(b), which relates to index option escrow deposits, by adding new subparagraph (2) which will define the term ''common stocks'' to include fund shares and trust units.[4] By adding this definition, OCC Rule 1801(b) now permits clearing members to use fund shares and trust units as part of an escrow deposit made with respect to index call option contracts carried in a

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38625 (May 13, 1997), 62 FR 27638.

[3] Similarly, OCC permits its clearing members to use certain publicly traded units of beneficial interest in unit investment trusts (''trust units'') as margin deposits under the conditions specified in subparagraph (4) of Rule 604(d). Currently, the only trust units approved for deposit as margin are Standard & Poor's (''S&P'') Depository Receipts (''SPDR's'') on the S&P 500 Index and S&P 400 Mid-Cap Index.

[4] The proposed rule change also makes numbering changes to Rule 1801 as a result of the addition of new subparagraph (b)(2).

short position in a clearing members' customer account.[5]

The language of the new definition parallels that of Rule 604(d), as amended herein. Accordingly, fund shares and trust units deposited as index option escrow deposits must meet the existing requirements for deposits of common stock under Rule 1801(b) and must be of a class approved by OCC for deposit as margin collateral. Because the Committee already has approved for deposit as margin SPDRs on the S&P 500 Index and S&P 400 Mid-Cap Index (as an eligible class of trust units) and WEBS (as an eligible class of fund shares), upon approval of this rule filing SPDRs and WEBS will be eligible for use as escrow deposits for short positions in index call options.[6]

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. Because fund shares and trust units, among other things, must be either traded on a national securities exchange or designated as a national market system security to be eligible as margin collateral, the proposal ensures that only liquid securities will be accepted as a form of margin or an escrow deposit. In addition, fund shares and trust units are typically traded and cleared like shares of common stock and are typically held in book-entry form at a securities depository.[8] As a result, OCC believes it will be able to readily perfect a security interest in deposited fund shares and will be able to liquidate them if necessary. Furthermore, OCC already has had an opportunity to gain experience in accepting trust units as a form of margin and will be able to use this experience in expanding to fund shares. Therefore, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act to safeguard securities and funds.

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–OCC–97–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25520 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[5] OCC has filed with the Commission a proposed rule change that will authorize OCC to issue and clear options on fund shares and trust units. Securities Exchange Act Release No. 38706 (June 2, 1997, 62 FR 31468. OCC also asserts that, if approved by the Commission, fund shares and trust units will by definition become ''underlying securities as defined by Article I, Section 1 of OCC's bylaws,'' and escrow deposits with respect to call option contracts on these underlying securities carried in a short position will be automatically permitted under the existing provisions of OCC Rule 610, which relates to the deposit of underlying securities in lieu of margin.

[6] OCC has indicated that if the Commission approves the proposal, OCC will send a notice to each of its custodian banks advising them that the term ''common stocks'' as used in the Amended and Restated On-Line Escrow Deposit Agreement includes the SPDRs and WEBS identified above.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] Securities Exchange Act Release No. 38105, (December 31, 1996) 62 FR 1014 [File No. SR–OCC–96–13] (order approving a proposed rule change relating to unit investment trusts as margin collateral).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Performance Review Board: Membership

AGENCY: Securities and Exchange Commission.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Securities and Exchange Commission announces the appointment of Performance Review Board members.

EFFECTIVE DATE: November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Carol S. Smith, U.S. Securities and Exchange Commission, Washington, DC 20549 (202) 942–4198.

The following are the names and present titles of the individuals appointed to the Performance Review Board established by the U.S. Securities and Exchange Commission.

Name, Title, Organization

Jennifer Scardino, Chief of Staff, Office of the Chairman

James M. McConnell, Executive Director, Office of the Executive Director

Richard Walker, General Counsel, Office of the General Counsel

For the Chairman, by the Executive Director, pursuant to delegated authority.

Dated: September 18, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25605 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Request for Management and Technical Assistance''.

Type of Request: Revision of Currently Approved Collection.

Form No: 641.

Description of Respondents: Individuals Requesting Counseling Management Counseling from SBA.

Annual Responses: 450,000.

Annual Burden: 59,850.

Title: ''Counselor's Case Report''.

Tye of Request: Revisions of Currently Approved Collection.

Form No: 641A.

Description of Respondents: SBI and Score Counselors.

Annual Responses: 450,000.

Annual Burden: 90,000.

Comments: Send all comments regarding these information collections to John Bebris, Director, Business Education & Resource Management, Small business Administration, 409 3rd Street, S.W., Suite 6100, Washington, D.C. 20416. Phone No: 202–205–7424. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–25627 Filed 9–25–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2981]

State of Illinois

As a result of the President's major disaster declaration on September 17, 1997, I find that Cook County, Illinois constitutes a disaster area due to damages caused by severe thunderstorms and flash flooding which occurred August 16–17, 1997. Applications for loans for physical damages may be filed until the close of business on November 15, 1997, and for loans for economic injury until the close of business on June 17, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Du Page, Kane, Lake, McHenry, and Will in Illinois, and Lake County, Indiana may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 298106 and for economic injury the numbers are 960900 for Illinois and 961000 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 19, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–25626 Filed 9–25–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S1 for the Office of the Deputy Commissioner, Finance, Assessment and Management is being amended to reflect internal realignments within the Office of Publication and Logistics Management (OPLM) (S1S). The four current subordinate offices within OPLM will be realigned and their functions integrated into a three subordinate office structure. The Office of Library, Records and Reprographics (S1SK) will be abolished in its entirety. The Office of Receiving, Storage and Issue (S1SC) will be retitled as the Office of Supply and Warehouse Management (S1SC). The Office of Supply and Property Management (S1SH) will be retitled as the Office of Property Management (S1SH). The changes are as follows:

Section S1S.10 *The Office of Publications and Logistics Management*—(Organization):

Delete:

G. The Office of Library, Records and Reprographics (S1SK).

Retitle:

D. The ''Office of Receiving, Storage and Issue: (S1SC) to the ''Office of Supply and Warehouse Management'' (S1SC).

E. The ''Office of Supply and Property Management'' (S1SH) to the ''Office of Property Management'' (S1SH).

Section S1S.20 *The Office of Publications and Logistics Management*—(Functions):

Retitle and amend as follows:

D. The ''Office of Receiving, Storage and Issue'' (S1SC) to the ''Office of Supply and Warehouse Management'' (S1SC).

1. The Office of Supply and Warehouse Management (OSWM) is responsible for the development of policies, procedures, and directives in support of the Agency's nationwide supply, warehouse and transportation systems and operations.

2. OSWM ensures that the Agency's printing requests and justified requisitions are processed timely and oversees the replenishment of warehouse stock for Headquarters' use and ensures delivery of major use forms and publications to the field.

3. OSWM provides transportation services as needed.

E. The ''Office of Supply and Property Management'' (S1SH) to the ''Office of Property Management'' (S1SH).

1. The Office oversees all policy and procedures pertaining to the acquisition, utilization, accountability, transfer and disposal of SSA personal property. Represents SSA's interest as liaison to HSS, GSA and other Federal, State and Local Government and private sector organizations and vendors in the acquisition, transfer and disposal of personal property. Oversees the acquisition and disposal of personal property. Oversees the acquisition and installation of modular/systems furniture in SSA offices nationwide. Acts as technical expert and plans, coordinates and implements studies and surveys related to providing necessary ergonomic furniture and equipment to support SSA employees.

2. Oversees the acquisition and installation of modular furniture in SSA offices. Plans, coordinates and implements studies and surveys to access the variety of ergonomic furniture previously purchased and new furniture available to SSA offices. Maintains audit trails for both normal and special expense incurred during and after furniture installation. Responsible for all financial management and contracting activities performed within the scope of the Interagency Agreement with the Federal Prison Industries.

Amend functions to read:

F. The Office of Publications Management (S1SJ).

1. The Office of Publications Management (OPM) directs a comprehensive SSA-wide forms control, publication and distribution management program, including forms and publications design, photocomposition and electronic information dissemination (electronic publishing, on-line publishing/services, electronic reference materials and CD-ROM and multimedia production and delivery). It also provides SSA-wide special media services for visually impaired employees. It is responsible for administering the regulatory and procedural requirements governing SSA's collection of information from the public, stemming from the Paperwork Reduction Act and providing liaison service with the Office of Management and Budget. The Office also coordinates the Agency Administrative Instructions Manual System (AIMS) for printing, clearance and issuance of policy, standards and procedural instructions.

2. The Office coordinates and directs a comprehensive printing management program and administers the procurement of all SSA printing needs.

It prepares the Agency's Comprehensive Printing Program Plan report for the Joint Committee on Printing (JCP) and provides liaison with the JCP and the Government Printing Office on policy and procedural issues. OPM plans, directs and administers the SSA mail policy program, including developing methodologies (e.g., presorting, barcoding, direct accountability, etc). It provides liaison with the United States Postal Service in all national level mail management and operational policy negotiations and activities. It also administers agencywide mail management contracts.

3. The Office plans, directs and coordinates the SSA mail handling program, including the receipt, processing, and dispatch of all incoming and outgoing United States Postal Service mail for SSA headquarters. It provides inter-office mail service for SSA headquarters and priority delivery service in Washington, D.C. It administers oversight of necessary contracts such as the internal mail messenger service. It consolidates and processes outgoing mail from headquarters to District Offices, Branch Offices, Program Service Centers and Regional Offices, etc. It also processes computer-generated priority notices to SSA beneficiaries nationwide, using high-speed equipment to fold, insert and label mailings.

4. The Office coordinates and directs a comprehensive printing management program and administers the procurement of all SSA printing needs. It prepares the Agency's Comprehensive Printing (JCP) and provides liaison with JCP and Government Printing office on policy and procedural issues. Plans, directs and administers the SSA mail policy program, including developing policy and procedures for more efficient Agency mail processing methodologies. It provides liaison with the United States Postal Service in all national level mail management and operational policy negotiations and activities. It also administers agencywide mail management contracts.

5. The Office of Publications Management develops, recommends and implements SSA policies and standards for library and information services of the SSA Headquarters Library and for SSA employees nationwide. It provides a collection of information on subjects related to SSA programs and their operation.

6. The Office provides SSA duplicating services for short turnaround work and for the development of metal photo requests for Commissioner's citations, award plaques, signs, etc.

Dated: August 21, 1997.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 97–25611 Filed 9–25–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Bureau of Consular Affairs (CA/VO/F/P)

[Public Notice 2603]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; OF–230 I & II, Application for Immigrant Visa and Alien Registration.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs (CA/VO/F/P).

Title of Information Collection: Application for Immigrant Visa and Alien Registration.

Frequency: On occasion.

Form Number: OF–230.

Respondents: Aliens.

Estimated Number of Respondents: 750,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 750,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: September 15, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–25531 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2609]

Advisory Committee on International Economic Policy Notice of Partially Closed Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet 9 a.m.–1 p.m. on Wednesday, October 8, 1997, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The meeting will be hosted by Committee Chairman Mike Gadbaw and by Assistant Secretary of State for Economic and Business Affairs, Alan P. Larson.

The closed briefings that the Department of State will arrange for ACIEP members will involve discussions of classified or business proprietary information, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. II section 10(d), and the Government in the Sunshine Act 5 U.S.C. 552b (c)(1), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(9)(B).

The open portion of the session, which will begin at approximately 12 noon, will focus *inter alia* on the economic dimensions of climate change.

For further information, contact Sharon Rogers, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520. she may be reached at telephone number (202) 647–5968 or fax number (202) 647–5713.

Dated: September 15, 1997.

Alan P. Larson,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 97–25535 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2606]

International Telecommunications Advisory Committee (ITAC) Ad Hoc on Administrative Preparations for the 1998 Plenipotentiary Conference Meeting Notice

The Department of State announces a meeting, under the International Telecommunications Advisory Committee (ITAC), of its Ad Hoc Group on administrative preparations for the next ITU Plenipotentiary Conference, to be hosted by the United States in Minneapolis in October/November 1998. The Ad Hoc meeting will be held Thursday, October 9, 1997, at 10 a.m. In Room 1207 of the Department of State, 22nd and C Street, NW., Washington, DC.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic telecommunications and information issues. To assist in preparations for specific international events and issues, the Department may establish an ITAC Ad Hoc group. The purpose of the upcoming Ad Hoc meeting is to provide an update on preparations for the 1998 Plenipotentiary Conference of the International Telecommunications Union (ITU).

Working group chairpersons of the Ad Hoc will report on past and upcoming activities. The telecommunications requirements for the Plenipotentiary Conference will be reviewed. Questions regarding the agenda may be directed to Anne Jillson, Department of State (202) 647–9117, fax number (202) 736–4933.

All participants may join in discussions, subject to instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to (202) 647–5957 at least 24 hours before the meeting, providing name, affiliation, date of birth and social security number, to arrange for pre-clearance. One of the following valid photo ID's is required for admittance: U.S. driver's license with picture, passport, government ID (company IDs are not accepted). Enter the ''C'' Street Main Lobby.

Dated: September 16, 1997.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 97–25525 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2607]

International Telecommunications Advisory Committee; Telecommunications Development Sector (ITAC–D) Group Meeting Notice

The Department of State announces the United States International Telecommunications Advisory Committee (ITAC) Telecommunications Development Sector (ITAC–D) Group will meet over the next several months to prepare for the upcoming International Telecommunications Union (ITU) World Telecommunication Development Conference scheduled for March 23–April 1, 1998 in Valletta, Malta. First preparatory meeting is scheduled for Friday, October 17, 1997, Room 1408, U.S. Department of State.

The agenda for the preparatory meeting is to discuss and review proposals to the Conference regarding the Development Sector's mission and strategic plan, its structure and methods of work and the priorities for the programme 1999–2003. U.S. proposals for new Study Group questions will also be discussed. It is expected that ad hoc committees will be formed at the first meeting to work on specialized or specific topics.

Questions regarding the meeting may be addressed to Ms. Doreen McGirr at 202–647–0201. If you wish to attend please send a fax to 202–647–7407 no later than two days before the scheduled meeting. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: September 17, 1997.

Doreen F. McGirr,

Chair of ITAC–D.

[FR Doc. 97–25526 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–45–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–102]

Determinations Under Section 304 of the Trade Act of 1974 With Respect to Certain Canadian Practices Affecting Periodicals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations, termination and monitoring.

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A)(ii) of the Trade Act of 1974 (19 U.S.C. 2414(a)(1)(A)(ii)) (''the Trade Act'') that certain acts, policies and practices of the Government of Canada that restrict or prohibit imports of certain periodicals into Canada and apply discriminatory treatment to certain imported periodicals violates, or otherwise denies benefits to which the United States is entitled to under, the General Agreement on Tariffs and Trade (GATT) 1994. This determination is based on the report of a dispute settlement panel convened under the World Trade Organization (WTO), at the request of the United States, to examine the Canadian measures at issue. That report, as modified by a report of the WTO Appellate Body, and adopted by the WTO Dispute Settlement Body (DSB), found four Canadian measures affecting periodicals to be inconsistent with Canada's obligations under GATT 1994.

Following the adopting of this report by the DSB, Canada submitted a letter to the DSB announcing its commitment to meet its obligations under the WTO with regard to this matter and comply with the panel and Appellate Body reports within a reasonable period of time. Thus, pursuant to section 304(a)(1)(B) of the Trade Act, the USTR has determined that, by making this commitment, Canada is taking satisfactory measures to grant the rights of the United States under the GATT. Therefore, the USTR will not take action under section 301 of the Trade Act at this time and has terminated this investigation, but will monitor under section 306 of the Trade Act Canada's implementation of this commitment.

EFFECTIVE DATE: September 11, 1997.

ADDRESSES: 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William Kane, Associate General Counsel, (202) 395–6800; or Megan Waters, Director for Canadian Affairs, (202) 395–3412.

SUPPLEMENTARY INFORMATION: On March 11, 1996, the United States Trade Representative initiated an investigation under section 302(b)(1) of the Trade Act of 1974 (''the Trade Act'') regarding certain measures adopted by the Government of Canada affecting periodicals and requested public comment on the issues raised in the investigation and the determinations to be made under section 304 of the Trade Act. 61 FR 11067 (March 18, 1996).

These measures included, but were not limited to, the following: (1) Tariff Code 9958, which prohibits the importation into Canada of certain periodicals; (2) Part V.1 of the Excise Tax Act, as enacted by Bill C–103 of December 15, 1995, which imposed an excise tax on certain so-called ''split-run'' periodicals, and (3) application of two types of discriminatory postal rates in favor of certain Canadian periodicals. As required under section 303(a) of the Trade Act, the USTR requested consultations with the Government of Canada under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Pursuant to Section 304(a)(1)(A) of the Trade Act, the USTR must determine in this case whether any act, policy or practice of the Government of Canada violates, or otherwise denies benefits to which the United States is entitled to under, any trade agreement. If that determination is affirmative, the USTR must take action under section 301 of the Trade Act, subject to the specific direction of the President, if any, unless, *inter alia,* the United States finds that the foreign country is taking satisfactory measures to grant the rights of the United States under the trade agreement.

Reasons for Determinations

(1) Canada's Acts, Policies and Practices

The WTO panel in this case circulated its report on March 14, 1997. The panel found that the following three Canadian measures violated Canada's obligations under the GATT: (1) Canada's import ban on certain periodicals; (2) Canada's 80 percent excise tax on so-called ''split-run'' periodicals, and (3) Canada's discriminatory ''commercial'' postal rates. Canada appealed the WTO panel's finding regarding the 80 percent excise tax, and the United States cross-appealed the panel's conclusion that a fourth Canadian measure—Canada's discriminatory ''funded'' postal rates—were a subsidy exempt from GATT national treatment requirements. The Appellate Body upheld the WTO panel's findings on the excise tax, but reversed the panel's finding (agreeing with the United States) regarding Canada's ''funded'' postal rates. The DSB adopted the WTO panel and Appellate Body reports on July 30, 1997. Thus, based on the results of the WTO dispute settlement proceedings, the public comments received and appropriate consultations, the USTR has determined pursuant to section 304(a)(1)(A)(ii) of the Trade Act that certain acts, policies and practices of the Government of Canada violate, or otherwise deny benefits to which the United States is entitled to under, GATT 1994.

(2) U.S. Action

Upon affirmative determination of the denial of rights under a trade agreement, the USTR must decide pursuant to section 304(a)(1)(B) of the Trade Act to take action unless, *inter alia,* the USTR finds that the foreign country is taking satisfactory measures to grant the rights of the United States under the trade agreement. On August 29, 1997, Canada submitted a letter to the DSB stating that it will meet its WTO obligations and will comply with the WTO panel and Appellate Body reports within a reasonable period of time. The USTR has determined that, in light of Canada's letter of intention, Canada is taking satisfactory measures to grant the rights of the United States under GATT. Thus, the USTR will not take action under section 301 of the Trade Act at this time and has determined this investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Canada's compliance with the WTO panel and Appellate Body report and will take action under section 304(a) of the Trade Act if Canada does not come into compliance.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–25586 Filed 9–25–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–063]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet to conduct a comprehensive review of currently effective boating safety regulations as previously announced. Special subcommittees will meet to review boating safety regulations dealing with manufacturer requirements, boat and equipment standards and operator requirements. Additionally, Council subcommittees on boat occupant protection, navigation lights, and personal flotation device-life saving index will meet to discuss various issues relating to recreational boating. All meetings will be open to the public.

DATES: NBSAC will meet on Monday and Tuesday, October 27 and 28, 1997, from 8:30 a.m. to 5 p.m. The Manufacturer Requirements, Boat and Equipment Standards, and Operator Requirements Regulations Review Subcommittees will meet on Saturday, October 25, 1997, from 1:30 p.m. to 5 p.m. and on Sunday, October 26 from 1:30 to 5:00 p.m. The Navigation Light and the Personal Flotation Device-Life Saving Index Subcommittees will meet from 8:30 to 10:30 a.m., and the Boat Occupant Protection Subcommittee from 10:00 a.m. to noon, on Sunday, October 26, 1997 .Written material and requests to make oral presentations should reach the Coast Guard on or before October 20, 1997. Requests to have a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting should reach the Coast Guard on or before October 14, 1997.

ADDRESSES: NBSAC will meet at the Holiday Inn Hotel and Conference Center, 210 Holiday Court, Annapolis, Maryland. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at URL address www.uscgboating.org/.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. A Notice of Request for Comments concerning the review of currently effective boating safety regulations by NBSAC was published in the **Federal Register** on May 28, 1997 (62 FR 28824).

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Executive Director's report.

(2) Chairman's session.

(3) Manufacturer Requirements Regulations Review Subcommittee report.

(4) Boat and Equipment Standards Regulations Review Subcommittee report.

(5) Operator Requirements Regulations Review Subcommittee report.

(6) Boat Occupant Protection Subcommittee report.

(7) Navigation Light Subcommittee report.

(8) Personal Flotation Device—Life Saving Index Subcommittee report.

(10) Recreational Boating Safety Program report.

(11) Canadian Coast Guard report.

(12) National Association of State Boating Law Administrators report.

(13) Coastal Zone Mission Analysis discussion.

(14) Fire extinguisher labeling discussion.

(15) Update on mandatory personal flotation device wearing requirements and mandatory boating safety education requests for comments.

(16) Update on Global Maritime Distress and Safety System and National Distress System Modernization Project Issues.

(17) Report on personal flotation device conspicuity research.

Manufacturer Requirements Regulations Review Subcommittee

The agenda includes the following:

(1) Review recreational boating safety regulations concerning capacity; flotation; certification; hull identification number, and defect notification.

(2) Present recommendation to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Boat and Equipment Standards Regulations Review Subcommittee

The agenda includes the following:

(1) Review recreational boating safety regulations concerning fuel and electrical systems, ventilation; start-in-gear protection; and backfire flame control.

(2) Present recommendations to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Operator Requirements Regulations Review Subcommittee

The agenda includes the following:

(1) Review recreational boating safety regulations concerning intoxicated operation; regattas and marine parades; personal flotation devices; visual distress signals; correction of especially hazardous conditions; numbering; accident reporting; and fire extinguishers.

(2) Present recommendations to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Boat Occupant Protection Subcommittee

The agenda includes the following:

(1) Review and discuss boat occupant protection study issues.

(2) Discuss risk avoidance alternatives.

(3) Discuss planned study research efforts.

Navigation Light Subcommittee

The agenda includes the following:

(1) Review and discuss issues concerning regulatory controls for navigation lights for recreational vessels.

(2) Discuss and make recommendations regarding the conduct of a study to improve the visibility and display of navigation lights focusing on hardware issues.

Personal Flotation Device—Life Saving Index Subcommittee

The agenda includes the following:

(1) Assist in the development of a consensus standard for application of the life saving index to various types of personal flotation devices.

(2) Review personal flotation device (PFD) conspicuity issues and recommend a course of action.

(3) Review the status of inflatable PFD inflation systems.

Procedural

All meetings are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 20, 1997. If you would like a copy of your material distributed to each member of the committee or subcommittees in advance of a meeting, please submit 25 copies to the Executive Director no later than October 14, 1997.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 22, 1997.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Operations.

[FR Doc. 97–25571 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.812–2. Floor Proximity Emergency Escape Path Marking Systems Incorporating Photoluminscent Elements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.812–2, Floor Proximity Emergency Escape Path Marking Systems Incorporating Photoluminescent Elements. This AC provides guidance material for use in demonstrating compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) regarding floor proximity emergency escape path marking systems (FPEEPMS) which incorporate photoluminesent elements. Like all ACs, it is not regulatory but is to provide guidance for applicants in demonstrating compliance with the objective safety standards set forth in the rule.

DATES: Advisory Circular 25.812–2 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100, on July 24, 1997.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or faxing your request to the warehouse at 301–386–5394.

Issued in Renton, Washington, on September 15, 1997.

James V. Devany,

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

[FR Doc. 97–25510 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee

(ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 6–9, 1997, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at Federal Aviation Administration Headquarters, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Reavis, Executive Director, ATPAC, Strategic Operations/ Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held October 6 through 9, 1997, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 3, 1997. The next quarterly meeting of the FAA ATPAC is planned to be held from January 12–15, 1998, location TBD.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 18, 1997.

Charles R. Reavis,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 97–25512 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Hearing of the National Civil Aviation Review Commission

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearing.

SUMMARY: The FAA is issuing this notice to advise the public of a hearing of the National Civil Aviation Review Commission. The Commission is soliciting comments and suggestions from the public regarding aviation safety issues.

DATES: The meeting will be held on Wednesday, October 8th at 9:30 am.

ADDRESSES: The hearing will be held at the Rayburn House Office Building in Room 2167, the House Transportation and Infrastructure Committee hearing room.

FOR FURTHER INFORMATION CONTACT: Margie Tower, (202) 366–6942, fax: (202) 493–2963, National Civil Aviation Review Commission, Room 8332, Nassif Bldg. 400 7th Street, S.W., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The National Civil Aviation Review Commission was created by Congress as part of the Federal Aviation Reauthorization Act of 1996. If you would like to testify at the public hearing, please contact Margie Tower at the phone number listed above. Attendance is open to the interested public but may be limited to space available. The public must make arrangements in advance to present oral statements at the hearing, and will be required to provide written statements to the Commission by close of business Friday, October 3rd.

Issued in Washington, DC, on September 19, 1997.

Margie Tower,

Hearing Officer, National Civil Aviation Review Commission.

[FR Doc. 97–25511 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. PS–142; Notice 8]

Pipeline Safety: Risk Management Public Meeting

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to notify pipeline operators, government agencies, and the public that OPS is hosting a public meeting to provide an update on the Risk Management Demonstration Program and to receive your input on the progress of the Program thus far and on specific demonstration projects under review.

DATES: The public meeting will be held on November 19, 1997, from 8:00 a.m. to 12:00 p.m. It is being held in conjunction with the Pipeline Safety Technical Advisory Committee meetings. These meetings are open to the public.

ADDRESSES: The public meeting will be held at the Adam's Mark Hotels and Resorts, 2900 Briarpark Drive at Westheimer, Houston, TX 77042. The Adam's Mark Hotel is located 35 minutes away from both Intercontinental and Hobby airports. Hourly shuttle and taxi service are available to either airport.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this Notice.

SUPPLEMENTARY INFORMATION:

The public meeting is being held in conjunction with two Pipeline Safety Technical Advisory Committee meetings. The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC) will meet on November 18 and 19. The THLPSSC will meet during the morning of November 18 and there will be a joint session of the THLPSSC and the TPSSC in the afternoon. The TPSSC will meet on the afternoon of November 19 following the risk management meeting.

The agenda will include an overview of the demonstration projects, an update on what we have learned from the consultation process, a discussion of the potential benefits of the projects and technologies used, an update on the plans for the Local Distribution Company Risk Assessment Quality Team and more. Before and after the meeting, OPS and candidate companies will be available to answer questions about specific demonstration projects and to demonstrate the Pipeline Safety Risk Management Information System, a database for all interested parties to learn more about pipeline risk management.

Issued in Washington, DC on September 22, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–25513 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board [1]

[Finance Docket No. 32530]

Kansas City Southern Railway Company—Construction and Operation Exemption—Geismar Industrial Area Near Gonzales and Sorrento, Louisiana

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of extension of time for comment period for draft environmental impact statement (EIS).

SUMMARY: The Kansas City Southern Railway Company (KCS) applied to the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board), for authority to construct and operate an 8.62-mile rail line from the Geismar Industrial area to its mainline near Gonzales and Sorrento, in Ascension Parish, Louisiana. On July 16, 1997, the Board's Section of Environmental Analysis (SEA) issued a draft EIS. Consistent with Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA), SEA provided a 45-day comment period for the public review of the draft EIS, with comments due by September 8, 1997.

In response to several requests to extend the comment period an additional 60 days, SEA granted a 15-day extension for filing comments to September 23, 1997.

The Concerned Citizens of Ascension Parish (CCAP) filed an Appeal of SEA's decision and requested the full 60 days sought in their original request. As stated in the original extension decision, SEA believes that the 45-day comment period specified by CEQ guidelines is sufficient in this case. However, in order to allow every opportunity for public input into the Board's NEPA process in this case, SEA will accept comments to the draft EIS for an additional 14 days past the current due date of September 23, 1997. Comments to the draft EIS will now be due on October 7, 1997.

If you wish to file comments on the draft EIS, send an original and 10 copies to: Vernon A. Williams, Secretary, Surface Transportation Board, Suite 700, 1925 K Street, NW, Washington, DC 20423. Mark the lower left corner of the envelope: Attention: Michael Dalton, Environmental Comments, Finance Docket No. 32530.

FOR FURTHER INFORMATION CONTACT: Michael Dalton, Section of Environmental Analysis, Room 528, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423; phone number (202) 565–1530. TDD for the hearing impaired: (202) 565–1695.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25641 Filed 9–25–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to section 49 U.S.C. 10901. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former section of the statute, unless otherwise indicated.

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on two information collections that are due for renewed approval by the Office of Management and Budget. The Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form BL–3, Intermediary's Notification of Foreign Borrowing Denominated in Dollars; and Treasury International Capital Form CM, Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.

DATES: Written comments should be received on or before November 25, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Gary A. Lee, Manager, Treasury International Capital Reporting System, Department of the Treasury, Room 5464, 1500 Pennsylvania Avenue NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Gary A. Lee, Manager, Treasury International Capital Reporting System, Department of the Treasury, Room 5464, 1500 Pennsylvania Avenue NW, Washington DC 20220, (202) 622–2270.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital Form BL–3, Intermediary's Notification of Foreign Borrowing Denominated in Dollars; and Treasury International Capital Form CM, Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.

OMB Numbers: 1505–0088 and 1505–0023.

Abstracts: Forms BL–3 and CM are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 USC 286f; 22 USC 3103; EO 10033; 31 CFR 128), and are designed to collect timely information on international portfolio capital movements. Form BL–3 is a monthly report used to strengthen compliance with existing TIC reporting requirements, whereby a U.S. bank advises its domestic nonbank customers of their responsibilities to report as liabilities on TIC Form CQ–1 their loans from foreigners that the bank will not include among its reportable custody liabilities to foreigners on TIC Form BL–2. Form CM is a monthly report whereby nonbanking enterprises in the U.S. report their total dollar deposit and certificate of deposit claims on foreign banks. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: No changes to reporting requirements for either form are proposed at this time.

Type of Review: Extensions.

Affected Public: Business or other for-profit organizations.

Form BL–3 (1505–0088).

Estimted Number of Respondents: 25

Estimated Average Time per Respondent: 30 minutes per respondent per filing.

Estimated Total Annual Burden Hours: 150 hours, based on twelve reporting periods per year.

Form CM (1505–0023).

Estimated Number of Respondents: 175

Estimated Average Time per Respondent: 30 minutes per respondent per filing.

Estimated Total Annual Burden Hours: 1,050 hours, based on twelve reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: Whether Forms BL–3 and CM are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Thomas Ashby McCown,

Director, Office of International Financial Analysis.

[FR Doc. 97–25523 Filed 9–25–97; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 19, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

Dates: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550–0019.

Form Number: SEC Schedules 13D, 13G, 14D–1, 14C, 14A and 14B; Sec forms 15, 8–A, 10, 10–K, 10–KSB, 8–K, 8–A, 12b–25, 10Q, 10QSB, 3, 4, 5, and Annual Report.

Type of Review: Extension of an already approved collection.

Title: Annual Reporting Requirements and Disclosures Required by the Securities Exchange Act of 1934.

Description: OTS collects periodic disclosure documents required to be filed by savings associations pursuant to the Securities Exchange Act of 1934 on forms promulgated by the U.S. Securities and Exchange Commission for its registrants.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 90.

Estimated Burden Hours Per Respondent: 500 hours average.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 272,613 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25574 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 19, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Dates: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550-0063.

Form Number: OTS Form 1564.

Type of Review: Extension of an already approved collection.

Title: Activities of Savings and Loan Holding Companies.

Description: 12 CFR Section 584.2–1 requires that savings and loan holding companies notify OTS when proposing to engage in the prescribed services and activities listed in this regulation. The OTS uses this information to track activities and decide the advisability of other actions.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Once.

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25575 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 19, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

Dates: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550–0077.

Form Number: OTS Form 1579.

Type of Review: Extension of an already approved collection.

Title: Operating Subsidiaries.

Description: 12 CFR Part 559 requires a savings association proposing to establish or acquire an operating subsidiary or conduct new activities in an existing operating subsidiary to either notify OTS or obtain the prior approval of the OTS. The regulation also requires a savings association to create and maintain certain documents.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 154.

Estimated Burden Hours Per Respondent: 14 hours.

Frequency of Response: Once.

Estimated Total Reporting and Recordkeeping Burden: 1,540.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25576 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 22, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

DATES: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550–0035.

Form Number: SEC Forms S–4, S–8, SB–1, SB–2, and OTS Forms PS, OC and G–12.

Type of Review: Extension of an already approved collection.

Title: Securities Offerings Disclosure.

Description: OTS collects information for disclosure in securities offerings by savings associations based on the U.S. Securities and Exchange Commission requirements for the offering of information to potential securities purchasers.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 71.

Estimated Burden Hours Per Respondent: 440 hours average.

Frequency of Response: Once.

Estimated Total Reporting Burden: 31,194 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25634 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

federal register

Friday
September 26, 1997

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE14

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1997–98 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1997. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of title 50 CFR part 20.

DATE: This rule takes effect on September 26, 1997.

ADDRESSES: Season selections from States are to be mailed to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1997

On March 13, 1997, the Service published in the **Federal Register** (62 FR 39712) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1997–98 duck hunting season. The June 6 supplement also provided detailed information on the 1997–98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 27, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13 and June 6 **Federal Registers** to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 23, 1997, the Service published in the **Federal Register** (62 FR 39712) a third document. This document contained the final regulatory alternatives for the 1997–98 duck hunting season and the proposed early-season frameworks for the 1997–98 season.

On August 7, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13, June 6, and July 23 **Federal Registers** to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 20, 1997, the Service published a fifth document (62 FR 44229) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. On August 25, 1997, the Service published a sixth document (62 FR 45078) which dealt specifically with proposed frameworks for the 1997–98 late-season migratory bird hunting regulations. On August 29, 1997, the Service published in the **Federal Register** (62 FR 46512) a seventh document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1997–98 season, is the eighth in the series.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 4, 1997, relating to proposed late-season frameworks, are discussed and addressed here. Mr. Robert McDowell, representing the Atlantic Flyway Council, presented a statement at the August 7, 1997, public hearing. Late-season comments are summarized and discussed in the order used in the March 13, 1997, **Federal Register**. Only the numbered items pertaining to late seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1996–97 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1996–97.

General

Written Comments: The Humane Society of the United States (Humane Society) expressed concern that the public was not well represented in the regulations-development process and requested establishment of a system directly involving the non-hunting public. In addition, they recommended that the Service undertake efforts to obtain population estimates for all hunted species. Finally, they recommended pre-sunrise shooting be disallowed.

Service Response: As we have stated previously, when the preliminary proposed rulemaking document was published in the **Federal Register** on March 13, 1997, the Service announced the comment periods for the early-season and late-season proposals and gave notice that the process of promulgating hunting regulations ''must, by its nature, operate under time constraints.'' Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates are set to give the greatest possible opportunity for public input. The Service is obligated to, and does, give serious consideration to all information received as public comment. The Service has long recognized the problems associated with the length of time necessary to establish the final frameworks, and in conjunction with States, Flyway Councils, and the public, continues to seek new ways to streamline and improve the regulatory process.

Regarding the Service's efforts to obtain population estimates, the long-term objectives of the Service continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, the Service evaluates the status of populations and considers the potential impacts of hunting. The Service believes that the hunting seasons provided herein are consistent with the current status of waterfowl populations and long-term population goals. In regard to shooting hours, the Service has compiled information which demonstrates that shooting hours beginning one-half hour before sunrise do not contribute

significantly to the harvest of nontarget species. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, **Federal Register** (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council, the Upper-Region Regulations Committee of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council recommended adopting the ''liberal'' alternative for the 1997–98 duck hunting season.

The Atlantic and Pacific Flyway Councils further recommended that the four regulatory packages adopted by the Service in the July 23, 1997, **Federal Register** be maintained until such time as the Service and Flyway Councils agree that there is compelling justification for modification.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the ''liberal'' alternative with a modification of the framework closing date. Specific details are discussed in *B. Framework Dates.*

Written Comments: The Pennsylvania Game Commission (Pennsylvania) supported the Adaptive Harvest Management process and was encouraged that information from eastern mallards was beginning to be used to develop harvest strategies for the Atlantic Flyway. While Pennsylvania supported the final four alternatives for 1997–98, they continue to support consideration for a fixed bag limit in all alternatives.

Individuals from California, Florida, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, and Utah requested that bag limits and season lengths not be increased this year since at least six duck populations (mallard, wigeon, pintail, redhead, scaup, and black ducks) declined in 1996.

Delta Waterfowl (Delta) believed that the Service was placing tremendous burden on individual States that recognize that the regulation package was overly excessive. Delta further believed that the Service should play more of a leadership role in the aspects of hunter attitudes and ethical standards of waterfowl hunting. By promoting soley highly technical, statistically confusing data and ignoring constituencies, Delta believed that the Service was not acting in the best interest of waterfowling. Further, Delta believed that hunters did not ask for extensive liberalizations in the regulations.

Service Response: Beginning in 1995, the Service, Flyway Councils, and States introduced a new approach to the regulation of duck harvests, called Adaptive Harvest Management (AHM). An integral part of this harvest-management approach is the cooperative establishment of a set of regulatory alternatives that includes specified season lengths and bag limits for very restrictive, restrictive, moderate, and liberal seasons. The alternatives established for this year's hunting season were the result of extensive discussions with the Flyway Councils and States since last January, as well as involvement by the public during an open comment period. The estimate of total ducks this year is 16 percent higher than the long-term average and several species are at record levels. The outlook for production is excellent and the 1997 fall flight will be comparable to those observed during the 1970s. Based on favorable input, the Service will continue use of the AHM approach initiated last year. The AHM strategy for 1997 prescribes the ''liberal'' regulatory alternative based on high mallard and pond numbers.

The framework closing date recommended by the Lower-Region Regulations Committee of the Mississippi Flyway Council differed from those in the ''liberal'' alternative established in the July 23 **Federal Register**. The Service's frameworks are consistent with the ''liberal'' alternative outlined in the July 23 **Federal Register** and was supported by the other three Flyway Councils as well as the Mississippi Flyway Council's Upper-Region Regulations Committee.

B. Framework Dates

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended an experimental extension of the framework closing date to January 31 to allow evaluation of the extension, as long as this does not affect regulations/framework packages in non-participating states.

Written Comments: The Mississippi Department of Wildlife, Fisheries and Parks (Mississippi) requested Service support and approval of the Lower-Region Regulations Committee of the Mississippi Flyway Council's study/framework extension proposal. Mississippi further offered to (1) accept a 50-day season in return for a January 31 closure, (2) close the season on the Sunday before January 31, (3) accept one less hen mallard in the bag, and (4) assist with the necessary funding to conduct the study.

The Humane Society recommended that all seasons open at noon mid-week in order to reduce the high level of harvest associated with traditional Saturday season openings. Furthermore, the Humane Society recommended that season openings be delayed by 2 weeks in all breeding areas in order to allow ducks time to leave natal marshes before being subjected to hunting pressure.

Service Response: In the July 23 **Federal Register**, the Service outlined the reasons why it did not support an expansion of the framework dates at this time.

Regarding the Humane Society's recommendation for mid-week season openings, the Service has previously stated in the **Federal Register** (58 FR 50190) that a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed.

F. Zones and Split Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service allow ''3 zones and 2-way splits in one or more zones'' as an additional option to the current zoning process. The Committee also requested that the Service allow States up to 1 year to choose this option, based on the public-input process States undertake, before they provide the Service with their proposal (prior to the 1998–99 regular-duck season).

Written Comments: The Maine Department of Inland Fisheries and Wildlife (Maine) supported the use of 3 zones and 2-way splits in one or more zones as an additional option to the current zoning criteria. Maine further requested this change be accomplished prior to the 2001 regulation cycle.

Several individuals from Iowa recommended an elimination of zones and allowing a continuous, statewide season. An individual from Missouri recommended the use of a 3-way split season in Missouri.

The Humane Society urges the Service to discontinue all split and

special seasons and recommends that any State establishing such seasons reduce the total number of hunting days by a minimum of 10 days.

Service Response: In 1990, the Service established guidelines for the use of zones and split seasons for duck hunting (**Federal Register**, 55 FR 38901). These guidelines were based upon an evaluation of the historical use of zone/split options, and were reviewed by the Flyway Councils. The primary purpose of the guidelines was to provide a framework for controlling the proliferation of changes in zones and split seasons which compromise our ability to measure impacts of various regulatory changes on harvest. One of the guidelines is that once a State selects a zone/split option during an open season, the option must remain in place for the following 5 years.

The first open season for changes was in 1991 and the second occurred last year when zone/split configurations were established for the 1996–2000 period. Last year during the open season, the Service revised the 1990 guidelines, based largely on recommendations from the four Flyway Councils. Final guidelines were published in the July 22, 1996, **Federal Register**. Currently, the 1997–98 season will be only the second year of the 5-year moratorium period. The next open season for changes in zone/split configurations will be in 2001.

In regard to the recommendation that split and special seasons be discontinued, the Service notes that States always have the option of selecting a continuous season with no splits. Furthermore, the Service is not aware of any information suggesting that split and special seasons are causing detrimental impacts to populations.

G. Special Seasons/Species Management

i. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended that the individual Atlantic Flyway States achieve a 42 percent reduction in their black duck harvest during the 1997–98 season compared with the 1977–81 base-line harvest.

Written Comments: The New Jersey Waterfowlers Association recommended a uniform black duck daily bag limit of 2 birds in the Atlantic Flyway.

Service Response: The Service agrees with the Atlantic Flyway Council's recommendation and acknowledges the Council's concern for the population status of black ducks. Black duck populations remain below the North American Waterfowl Management Plan goal, and while the decline seems to have halted, little increase is evident. The Service believes the harvest restrictions identified in the 1983 *Environmental Assessment* should be maintained until a revised harvest strategy is developed.

ii. Canvasbacks

Written Comments: The New Jersey Waterfowlers Association recommended a canvasback daily bag limit of 2 birds based on 1995 and 1996 breeding population indices.

Service Response: The Service continues to support the canvasback harvest strategy adopted in 1994. Current population and habitat status suggests that a daily bag limit of 1 canvasback during the 1997–98 season will result in a harvest within levels allowed by the strategy. The Service believes that it has insufficient experience with this harvest strategy to consider modifications at this time, and is concerned that an overly aggressive strategy could precipitate a return to closed seasons. The Service, as stated in previous **Federal Registers**, is continuing to monitor the performance of the canvasback harvest strategy adopted in 1994. The Service is particularly interested in harvest information from the coming duck season, which will have the longest season lengths offered in decades. Prior to next summer, the Service plans to assess how well observed harvests and population abundance were predicted by the strategy. The Service notes that the development of the canvasback strategy took several years and required a lot of technical work and consensus-building. The resulting strategy appears to have been fairly successful at meeting the major needs expressed: (1) provides a consistent harvest strategy (i.e., minimizing closed seasons as previously experienced); (2) provides hunting opportunity over a wide geographic area; (3) does not include seasons within seasons; and (4) provides for a fairly stabilized population.

A complete reassessment of the strategy is not a high priority, given other pressing issues with AHM. The extent of the assessment will be tempered by the amount of staff time needed to address higher-priority issues.

iii. Pintails

Council Recommendations: The Atlantic Flyway Council recommended a 2-bird daily bag limit for pintails in the 1997–98 hunting season instead of the 3-bird daily bag limit prescribed by the Interim Pintail Harvest Strategy.

Written Comments: The Pennsylvania Game Commission did not support the proposed interim pintail harvest strategy. They believe that the status of pintails derived from eastern areas is uncertain and that increasing the bag limit to 3 birds will lead to negative perceptions from hunters. They recommend a 2-bird daily bag limit.

Delta Waterfowl did not support a 3-pintail daily bag limit in all four Flyways. They believed that the proposal did not have adequate time for public input and that such a change would further erode the confidence of hunters in AHM. They recommended that, if a 3-bird limit were approved, that no more than 1 hen pintail be allowed. Individuals from Michigan and Minnesota recommended that the pintail daily bag limit remain at 1 bird.

The National Wildlife Federation was concerned that pintails remain below population objectives and believed it would be prudent to reduce the pintail daily bag limit to 2.

The Wildlife Management Institute expressed concern over the status of pintails, but believed the interim strategy provides the Service with a solid foundation for the time being.

Service Response: In the July 23 **Federal Register**, the Service adopted the Interim Strategy for Northern Pintail Harvest Regulations detailed in the June 6 and July 23 **Federal Registers**. The Service adopted this interim strategy with the understanding that it would be replaced by a more fully adaptive approach at the earliest opportunity and because it addressed key Service concerns outlined in the July 22, 1996, **Federal Register** (61 FR 37994). For the 1997–98 hunting season, the interim harvest strategy prescribes a 3-bird daily bag limit for pintails in all four Flyways.

iv. High Plains Management Unit

Council Recommendations: The Central Flyway Council recommended minor administrative changes to the High Plains Mallard Management Unit boundary in North Dakota and South Dakota for boundary clarification and wetland development.

Service Response: The Service concurs.

4. Canada Geese

Council Recommendations: The Atlantic Flyway Council recommended the Service not open the regular hunting season on Atlantic Population (AP) Canada geese during the 1997–98 season except that a 10-day season with a 1-bird daily bag limit be allowed during November in that portion of New England east of the Connecticut River and in eastern Long Island, New York, where geese from the Maritime segment of the AP population may occur.

The Atlantic Flyway Council also recommended the establishment of

regular-season frameworks in Maine, West Virginia, South Carolina, Georgia, and Florida, and those portions of New York, Pennsylvania, Maryland, Virginia, and North Carolina that have been determined not to contain AP Canada geese. The Council's recommended frameworks would consist of a 70-day season with a 3-bird daily bag limit for Maine, West Virginia, South Carolina, Georgia, and Florida with framework dates of October 1 to February 15; a 70-day season with a 3-bird daily bag limit for designated portions of Virginia, Maryland, Pennsylvania, and New York with framework dates of November 15 to February 15; and a 46-day season with a 3-bird daily bag limit in designated portions of North Carolina with framework dates of October 1 to November 15.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs.

The Pacific Flyway Council recommended several changes in Canada goose frameworks. In southwest Washington and northwest Oregon, the Council recommended increasing the bag and possession limits on cackling Canada geese from 2/4 to 3/6 respectively in the regular season. In the Balance-of-the-State Zone in California, the Council recommended that the season for cackling Canada geese be extended by two weeks and the possession limit be expanded from 1 to 2 birds. In western New Mexico, the Council recommended increasing the bag and possession limit from 2/4 to 3/6, respectively. Regarding dusky Canada goose harvest quotas, the Council recommended establishment of a 85 dusky Canada goose quota in Washington's Lower Columbia River Special Goose Management Area and a 165 dusky Canada goose quota in Oregon's Special Goose Management Area. Finally, the Council recommended a minor revision the Western Washington Goose Management Area 2.

Written Comments: The Massachusetts Division of Fisheries and Wildlife supported the Atlantic Flyway Council's recommendation for a 10 day, 1-bird daily bag in the New England area.

The Pennsylvania Game Commission expressed disappointment with the Service's proposal to not accept the Atlantic Flyway Council's recommendation for regular goose seasons in areas free of AP geese. They believed that the Service's proposal is not supported by available data and serves to further complicate regulations in Pennsylvania by creating four areas with different goose regulations. They disagree with the Service's position to manage much of western Pennsylvania as Southern James Bay Population harvest areas and are concerned that the Service has ignored available data supporting the creation of regular-season resident goose areas. They also questioned the need to evaluate the special late season in areas free of migrant geese.

The National Wildlife Federation agreed with the Service's frameworks intended to help restore migratory geese in the Atlantic Flyway, while the Wildlife Management Institute applauded the Service's decision to forego seasons on Atlantic Population geese even though production appears to have improved.

The Southshore Waterfowlers Association of New York and the Concerned Coastal Sportsmen's Association of Massachusetts supported the Atlantic Flyway Council's recommendation of a 10-day season in New England.

An individual from Massachusetts supported keeping the season on AP geese closed, while an individual from Pennsylvania recommended reinstatement of the regular season on AP geese.

An individual from Washington recommended a 4-bird limit in the Southwest Washington Zone.

Service Response: The Service does not support the Atlantic Flyway Council's request for a November season (10 days) with a 1-bird daily bag limit in that portion of New England east of the Connecticut River, including eastern Long Island, NY, because this stock of geese has been considered part of the Atlantic Population and a management plan describing this Maritime Population of Canada geese has not yet been developed. The Service first requested that a Plan be developed in 1995 and encouraged the Council to work cooperatively with the Canadian Provinces to gather more data, review key population parameters, and establish an appropriate harvest strategy. Although the Service does not oppose the delineation of a Maritime population, if warranted, more information is needed to separate the Atlantic Population into two units. A management plan should set population goals, identify monitoring programs and contain some means to evaluate its status and the effects of harvest. The Service reiterates its longstanding policy to manage Canada geese on a population basis, guided by cooperatively developed management plan.

Regarding the Atlantic Flyway Council's request to establish a regular season on Canada geese in portions of the Flyway determined not to contain AP geese, the Service believes that it is appropriate to conduct such a season provided that it is consistent with the Southern James Bay Population (SJBP) Management Plan, and maintains those restrictions currently in place in several areas (Pennsylvania and South Carolina).

Thus, the Service will allow the following: in designated areas of Pennsylvania, Maryland, and Virginia, a 40-day season with a 2-bird daily bag limit between November 15 and January 14 and the continuation of existing experimental 30-day special late seasons with a 5-bird daily bag limit between January 15 and February 15; in designated areas of New York, a 70-day season with 2-bird daily bag limit between November 15 and January 31; in designated areas of North Carolina, a 46-day season with a 2-bird daily bag limit between October 1 and November 15; in West Virginia, a 70-day season with a 3-bird daily bag limit between October 1 and January 31; in South Carolina, Georgia, and Florida, a 70-day season with a 5-bird daily bag limit between October 1 and February 15.

The Service does not support the Council's request for a regular season in Maine because a management plan for Maritime Canada geese has not been developed. The Service believes that it would be inconsistent to establish a season without having a management plan for the entire New England area. Therefore, the Service again asks that the Council work to develop a management plan for Maritime Canada geese.

The Service recognizes Pennsylvania's concerns regarding the complicated configurations of Canada goose hunting regulations in different areas of the State and believes that these regulations should be reviewed and simplified to the extent possible. However, the Service does not agree that a regular season on resident Canada geese should be established in most areas that are more liberal than those prescribed by the SJBP Management Plan. Presently, the Service has not established migrate-free regular seasons in any Flyway. Furthermore, the regular season request approved by the Atlantic Flyway included areas in other states that are harvesting SJBP geese. Also, several of these areas, including portions of Pennsylvania, have special late seasons specifically designed to harvest resident Canada geese. These

seasons remain experimental and continue to be evaluated. The Service encourages the Atlantic Flyway Council to continue its review of harvest strategies for specific populations of Canada geese, and to update management plans and simplify regulations wherever possible.

The Service concurs with the changes proposed by the Pacific Flyway Council.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended that New York be allowed to expand its existing experimental late season area to new areas along the north shore of Long Island and in other areas of southeastern New York.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a special late season for four counties in Indiana. The Committee also recommended that the experimental special late season in Michigan's Southern Michigan Goose Management Unit (GMU) be extended for one additional year to allow completion of the final report, and that the bag limit be increased from 2 to 5. The Committee further recommended a new experimental late season be initiated in the Central Michigan GMU with a 5-bird daily bag limit.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that in areas where Canada goose populations of special concern exist, the Service should closely monitor any cumulative effects that special seasons may have on non-target populations.

The Pacific Flyway Council recommended several changes in the special late-season frameworks. In southwest Washington, the Council recommended increasing the bag and possession limits on cackling Canada geese from 2/4 to 3/6, respectively, in the late season. Regarding dusky Canada geese, the Council recommended changing the late-season framework opening date to January 24 in Washington's Lower Columbia River Special Goose Management Area.

Written Comments: An individual from Massachusetts requested a special late season for Canada geese on Cape Cod.

The Humane Society opposed special late seasons targeting resident geese. They believe that such hunts fail to target the populations ostensibly responsible for conflicts with humans and as such are ineffective.

Service Response: The Service concurs with the Atlantic Flyway Council's recommendation to expand New York's existing late season to new areas of Long Island and southeastern New York.

Regarding the Mississippi Flyway Council's Upper-Region Regulations Committee recommendation to allow an experimental special late Canada goose season in four counties in Indiana beginning in 1997, the Service does not support the experimental season. The criteria for special seasons require two years of data collection prior to the beginning of an experiment and that the data demonstrate that the season likely will meet the criterion regarding proportion of migrants in the special-season harvest. Of the four counties proposed, no data were presented for one county and only one year of data for another. The limited data available (a total of only 12 collars were seen, 3 of which were migrant collars) indicate that about 25 percent of the harvest would be migrant geese, which exceeds the 20 percent level in the special-season criteria. The Service concurs with the recommendations for Michigan's special late seasons. The Service notes the concern expressed by the Mississippi Flyway Council's Lower-Region Regulations Committee about the cumulative effects of special-season harvests and will continue to monitor those harvests in all areas.

The Service concurs with the changes proposed by the Pacific Flyway Council.

5. White-fronted geese

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended extending the season length from 70 to 86 days and changing the framework closing date from January 31 to February 15.

The Pacific Flyway Council recommends that hunting frameworks for 1997–98 be changed by adding 14 days and 1 bird to the daily bag and possession limits for dark geese in the Balance-of-the-State Zone in California.

Written Comments: An individual from Louisiana recommended a 75- to 80-day season with a 3-dark goose limit including no more than 1 Canada goose.

Service Response: The Service will continue use of the same frameworks as last year in 1997–98. Greater white-fronted geese in the Central and Mississippi Flyways previously have been managed as separate segments of the Mid-continent Population under separate management plans. Recent information has suggested that Mid-continent whitefronts should be managed as one population, and revision/combination of the management plans into one plan is under way. The Central Flyway Council and Canada both are considering liberalizations in harvest opportunity for Mid-continent whitefronts, but are delaying recommendations for such changes until the new management plan is in place. The Service believes that changes in the Mississippi Flyway also should be deferred until the new management plan is in place, when all recommendations for liberalizing harvest opportunity can be considered in light of the goals, objectives, and harvest strategies in the new plan.

The Service concurs with the changes proposed by the Pacific Flyway Council.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 50-day Atlantic brant season with a 2-bird daily bag limit.

Written Comments: The New Jersey Waterfowlers Association supported the continued use of the Atlantic brant hunt plan.

Service Response: The Service concurs with the recommendation.

7. Snow and Ross's Geese

Council Recommendations: The Atlantic Flyway Council recommended a daily bag and possession limit of 10 and 30, respectively.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that in a further effort to increase snow goose harvest, the Service implement regulatory changes, as suggested by the Arctic Goose Joint Venture Management Board, for the 1998–99 hunting season.

The Central Flyway Council recommended a March 10 framework closing date, except for the Rainwater Basin Light Goose Area in Nebraska, where the framework closing date would vary according to an experimental late-winter snow goose hunting strategy proposed by the Council. The Council also recommended no limit on the number of season splits in the East-tier States.

The Pacific Flyway Council recommended expanding the possession limit to twice the daily bag limit in the Balance-of-the-State Zone in California.

Written Comments: The Rainwater Basin Joint Venture Management Board of the North American Waterfowl Management Plan urged the Service to consider the possibility of alternatives to the hunting regulations of the last 2 years (complete closure of the Rainwater Basin region after mid-February).

The National Wildlife Federation agreed with the Service's frameworks intended to help reduce white goose populations.

The Wildlife Management Institute supported the need to reduce

populations of snow geese which are creating habitat problems on northern breeding areas. They further recognized that customary approaches to harvest have not controlled populations and that more innovative actions may be necessary.

An individual from Louisiana recommended a 12-bird limit. Other individuals from Louisiana, Kansas, and Missouri recommended allowing the use of electronic calls to hunt snow geese. Another individual from Arkansas recommended the use of rifles for snow geese. Several individuals from Iowa recommended allowing a later and longer hunt in the spring. An individual from Texas recommended allowing the use of lead shot.

Service Response: The Service concurs with the Atlantic Flyway Council's recommendation to increase the daily bag and possession limits on snow geese. The Service believes that the extension of the ending framework date for hunting of light geese until March 10 in Nebraska's Rainwater Basin Area may pose a threat to the management and welfare of other migratory bird species during the spring migration period. In response to these concerns, the Central Flyway Council proposed an experimental late-winter hunting strategy in the eastern portion of this important spring staging area. This proposal contains the use of both temporal and spacial constraints on hunting activity and results in a hunting strategy that would allow for evaluation of any negative impacts related to disturbance and distribution of other migratory birds, disease management, eco-tourism, and endangered species. The Service supports this experimental strategy, provided a mutually-acceptable evaluation component is developed and implemented. The Service will cooperate with the Nebraska Game and Parks Commission to develop and complete assessments of this experimental strategy.

The Service does not support the Central Flyway proposal for East Tier States that would allow for an unlimited number of splits during light goose seasons. Alternatively, the Service supports increasing the allowed number of season segments from 2 to 3. This increase would result in a more consistent use of split-season options among all flyways. The Service also believes that the ability to divide light goose seasons into 3 segments provides adequate flexibility to use the current season length of 107 days.

The Service concurs with the changes proposed by the Pacific Flyway Council.

Regarding the recommendations from several commenters on expanding the allowable hunting methods for snow geese, the Service recognizes the problems associated with over-population of Mid-continent snow geese and believes that some management actions, including modification of the basic regulations, may be appropriate. However before any such modifications to the basic regulations, the Service must conduct a thorough public review process.

8. Swans

Written Comments: The Humane Society requested that the Service close all swan hunting seasons, citing that tundra swan seasons were impeding, if not preventing, winter range expansion and recovery of trumpeter swans.

Service Response: The Service would refer the Humane Society to our detailed response in the September 27, 1995, **Federal Register** (60 FR 50042) concerning the establishment of a general swan season. Enhancing Rocky Mounting Population trumpeter swan range expansion while retaining most aspects of tundra swan hunting were covered in detail in our 1995 Environmental Assessment ''Proposal to Establish General Swan Seasons in Parts of the Pacific Flyway for the 1995–99 Seasons'' (August 1995) which compares various alternative strategies for reconciling conflicting swan management strategies. Copies are available from the Service at the address indicated under the caption **ADDRESSES**.

23. Other

A. Compensatory Days

Council Recommendations: The Atlantic Flyway Council requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. The Council's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia. The Council believes that granting this request at this time will allow integration of these changes into AHM evaluations of harvest rates in the Flyway and selection of appropriate regulatory alternatives.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, offered to modify the Flyway's original request for compensatory days to states closed to Sunday hunting by restricting it to only those states with existing statewide prohibitions in place prior to its implementation. This action prevents any states from enacting new laws to close Sunday hunting in order to be eligible for compensatory days.

Written Comments: The South Carolina Department of Natural Resources asserted that Sunday closures of waterfowl hunting are State issues and should not be addressed by the Service. South Carolina further asserted that if the Service grants compensatory days to States that are currently closed on Sundays by State law, then compensatory days should also be granted to States that enact Sunday closures in the future. In a subsequent letter, South Carolina asserted that the Service's action was arbitrary and capricious and in violation of the First Amendment of the U.S. Constitution.

The Georgia Department of Natural Resources objected to the Service offering compensatory days to States in the Atlantic Flyway with Sunday closures. They believed that this was a State issue and, as such, the Federal government should not be involved. They further believed that each State should change any applicable self-imposed restrictions relating to Sunday hunting closures and that involving Federal procedures to circumvent State laws sets a bad precedent that could open the door for further involvement in future unresolved issues.

The Delaware Division of Fish and Wildlife (Delaware) recommended the Service grant compensatory days in lieu of Sunday hunting on a 1 for 1 basis to restricted States with no penalty to unrestricted States. In a subsequent letter, Delaware thanked the Service for proposing to grant compensatory days to those States and believed that the issue was more symbolic than biological. Further, Delaware did not believe that any significant change in harvest would result.

The Maryland Department of Natural Resources (Maryland) requested that the Service grant compensatory days to the 10 Atlantic Flyway States that are closed to waterfowl hunting on Sunday by State law. They believe that compensatory days would enable these States to equally share in the recreational benefits derived from the Flyway's waterfowl resource. Maryland supported the Federal closure of Sunday for the taking of wild waterfowl if the Service deemed this approach necessary to provide compensatory days. However, Maryland requested the Service give consideration to the current Sunday hunting exception Maryland grants falconers.

The New Jersey Division of Fish, Game and Wildlife (New Jersey)

requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. New Jersey's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The compensatory request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia.

The Massachusetts Division of Fisheries and Wildlife and the Pennsylvania Game Commission supported the Service's proposal to allow compensatory days to those States prohibited from hunting on Sundays. They believed that compensatory days would address the issue of inequality in hunting opportunities that exist in the Atlantic Flyway.

The North American Falconers Association and several individuals from Maryland questioned the need to close Sundays to the take of all migratory waterfowl, including falconry, in order to provide compensatory hunting days to those States prohibiting Sunday hunting.

The Concerned Coastal Sportsmen's Association of Massachusetts supported and commended the Service for offering States in the Atlantic Flyway that now prohibit Sunday hunting compensatory hunting days. An individual from Massachusetts supported offering States that now prohibit Sunday hunting compensatory hunting days.

The Humane Society opposed granting compensatory days in those Atlantic Flyway states where Sunday hunting is prohibited. The Humane Society believed that hunters in those States should work for the passage of legislation to change State law regarding Sunday closures rather than requesting that the Service compensate them.

Service Response: In 1995, the Service committed to working with the Atlantic Flyway Council to review and better clarify the issue of compensatory days for those States prohibiting Sunday hunting in an attempt to resolve this long-standing issue. In the past, the Service has maintained the policy that this problem is an individual State issue, to be resolved by each State removing their self-imposed restrictions. However, recognizing the difficulties involved with changing State law, the Service is sympathetic to the loss of hunting opportunity that results from the existing prohibitions on Sunday hunting. A recent Service assessment suggests that compensatory days for Sunday closures will result in a slight increase in the harvest rates of mallards breeding in eastern Canada and the northeastern U.S., which would be accompanied by a small decrease in average breeding population size. A similar effect is expected on other species. Thus, after examining the various technical and policy concerns, the Service believes that any additional harvest impacts can be adjusted by changing regulatory frameworks where needed and that various administrative and procedural concerns can be managed. Therefore, during the 1997–98 hunting season, the Service will offer compensatory days to States in accordance to the following guidelines: (1) Only States in the Atlantic Flyway that prohibit Sunday hunting *Statewide* by State law prior to 1997 are eligible (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia); (2) All Sundays will be closed to all take (including extended falconry) of migratory waterfowl (including mergansers and coots) by Federal rulemaking. Other migratory game species are not eligible for compensatory days; (3) Season days must run consecutively within prescribed framework dates and season length, excluding the Sunday closure, and conform to existing split-season criteria. Total season days (including extended falconry) must not exceed 107 days.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may cause modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Regulatory Flexibility Act

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the MBMO.

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). The Service uses the various information collection requirements contained in this rule to develop future migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018–0015. This information is used to provide a sampling frame for voluntary

national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1997–98 season. The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1997–98 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

Dated: September 12, 1997.

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1997–98 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1997, and March 10, 1998.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese - Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese - snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 60 days and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 3 pintails, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 1 canvasback.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: The Canada goose season is suspended throughout the Flyway except as noted below. Unless specified otherwise, seasons may be split into two segments.

Connecticut: A special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Florida: A 70 day season may be held between November 15 to February 15, with 5 geese per day.

Georgia: In specific areas, a 70-day season may be held between November

15 and February 15, with a limit of 5 Canada geese per day.

Maryland: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season in designated areas of western Maryland may be held from January 15 to February 15, with 5 geese per day.

Massachusetts: In the Central Zone and a portion of the Coastal Zone, a season may be held from January 15 to February 15, with 5 geese per day.

New Jersey: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with 5 geese per day.

New York: In designated areas, a 70-day season may be held between November 15 to January 30, with 2 geese per day. An experimental season may be held between January 15 and February 15, with 5 geese daily in designated areas of Chemung, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

North Carolina: A 46-day season may be held between October 1 and November 15, with 2 geese per day Statewide, except for the Northeast Hunt Unit and Northampton County.

Pennsylvania: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. In Erie, Mercer, and Butler Counties, a 70-day season may be held between October 1 and January 31, with 2 geese per day. In Crawford County, a 35-day season may be held between October 1 and January 20, with 1 goose per day.

An experimental season may be held in the designated areas of western Pennsylvania from January 15 to February 15 with 5 geese per day.

Rhode Island: An experimental season may be held in a designated area from January 15 to February 15, with 5 geese per day,

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a daily bag limit of 5 Canada geese per day.

Virginia: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season may be held between January 15 to February 15, with 5 geese per day, in all areas west of Interstate 95.

West Virginia: a 70-day season may be held between October 1 and January 31, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with 10 geese per day and 30 in possession. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with 2 brant per day. States may split their seasons into two segments.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (October 4) and the Sunday nearest January 20 (January 18).

Hunting Seasons and Duck Limits: 60 days with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 3 pintails, 2 wood ducks, 1 canvasback, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Arkansas, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 4) and January 31, and 107 days for light geese between the Saturday nearest October 1 (October 4) and March 10. The daily bag limit is 10 light geese, 3 Canada geese, 2 white-fronted geese, and 2 brant. The possession limit for light geese is 30. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 16 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 74,600 birds. Limits are 2 Canada geese daily and 10 in possession.

(a) North Zone - The season for Canada geese will close after 78 days or when 8,400 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone - The season for Canada geese will close after 78 days or when 12,500 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone - The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 26,400 and 5,700 birds, respectively. The season for Canada geese in each zone will close after 78 days or when the harvest limit has been reached, whichever occurs first. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

(1) Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

(2) Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 78 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first.

Indiana: The total harvest of Canada geese in the State will be limited to 19,200 birds.

(a) Posey County - The season for Canada geese will close after 65 days or when 3,450 birds have been harvested, or when the harvest at the Hovey Lake Fish and Wildlife Area exceeds 1,725 birds, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 65 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone - The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 16,500 birds. Of the 16,500-bird quota, 10,750 birds will be allocated to the Ballard Reporting Area and 3,135 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit for Canada and white-fronted geese is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 41,700 birds.

(a) North Zone - The season for Canada geese may extend for 16 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 16 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 41 days or when 1,760 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 43 days or when 560 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone - The season for Canada geese may extend for 20 days. The daily bag limit is 1 Canada goose the first 9 days and 2 Canada geese thereafter.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

(e) Central Michigan GMU - An experimental special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Fergus Falls/Alexandria Zone - A special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Swan Lake Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The season may be split into 3 segments, provided that one segment of at least 9 days occurs prior to October 15. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuning Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee

(a) Northwest Zone - The season for Canada geese will close after 79 days or when 6,150 birds have been harvested, whichever occurs first. The season may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 64 days, and the harvest will be limited to 750 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese. In lieu of the quota and tagging requirement above, the State may select either a 50-day season with a 1-bird daily bag limit or a 35-day season with a 2-bird daily bag limit for this Zone.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 55,700 birds.

(a) Horicon Zone - The framework opening date for all geese is September 20. The harvest of Canada geese is limited to 27,600 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 20. The harvest of Canada geese is limited to 900 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is September 27. The harvest of Canada geese is limited to 22,700 birds, with 500 birds

allocated to the Mississippi River Subzone. The season may not exceed 93 days and the daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 22,200 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northwest and Kentucky/Barkley Lakes (if applicable) Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: Between October 4 and January 18.

Hunting Seasons and Duck Limits: (1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days and a daily bag limit of 6 ducks, including no more than 5 mallards (2 hens), 1 mottled duck, 1 canvasback, 2 redheads, 2 wood ducks, and 3 pintails. The last 23 days may start no earlier than the Saturday nearest December 10 (December 13).

(2) Remainder of the Central Flyway: 74 days and a daily bag limit of 6 ducks, including no more than 5 mallards (2 hens), 1 mottled duck, 1 canvasback, 2 redheads, 2 wood ducks, and 3 pintails.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons not to exceed 107 days; except for dark geese, which may not exceed 86 days in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas. For dark geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 4) and January 31, except in the Western Goose Zone of Texas, where the closing date is the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 4) and March 10, except in the Rainwater Basin Light Goose Area of Nebraska where the closing date is February 1 in the West and March 10 in the East with temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1997. The daily bag and possession limits for light geese are 10 and 40, respectively.

Dark goose daily bag limits in States and goose management zones within States, may be as follows:

Kansas, Nebraska, Oklahoma, and South Dakota: 2 dark geese, including no more than 1 white-fronted goose.

Colorado, Montana, New Mexico and Wyoming: 4 dark geese.

North Dakota: 2 dark geese.

Texas: For the Western Goose Zone, the daily bag limit is 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

For the Eastern Goose Zone, the daily bag limit is 2 dark geese, including no more than 1 white-fronted goose.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 107 days and daily bag limit of 7 ducks and mergansers, including no more than 2 female mallards, 3 pintails, 2 redheads and 1 canvasback.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (October 4) and the Sunday nearest January 20 (January 18).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and the Sunday nearest January 20 (January 18), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation, by each participating State.

Brant Season - A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive day season may be selected in California. In these States, the daily bag limit is 2

brant and is in addition to dark goose limits.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2.

California

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79-day season may be selected. Limits may not include more than 3 geese per day and 6 in possession, of which not more than 2 daily and 4 in possession may be white-fronted geese and not more than 1 daily or 2 in possession may be cackling Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before December 14, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit - The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone - The daily bag limit on dark geese is 4.

Nevada

Lincoln and Clark County Zone - The daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3 and may include 3 cackling Canada geese.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 3 and may include 3 cackling Canada geese.

Wyoming: The daily bag limit is 4 dark geese.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late Canada goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 3 cackling Canada geese.

In the designated areas of the Washington Quota Zone, a special late Canada goose may be held between January 24 and March 10. The daily bag limit may not include Aleutian Canada geese. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended the Sunday closest to March 1.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (October 4). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1998, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 7) or upon attainment of 15 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued.

—In South Dakota, no more than 1,500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I-95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I-95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I-95 (New Hampshire Turnpike) in Hampton, and south along I-95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I-64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I-79, I-79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to

the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I-75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Mississippi

Zone 1: Hancock, Harrison, and Jackson Counties.

Zone 2: The remainder of Mississippi.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S, 183, south along U.S. 183 to KS 4, east along KS 4 to I-135, south along

I-135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of Highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and east of a line extending from the South Dakota border along NE 26E Spur to U.S. 20, west on U.S. 20 to NE 12, west on NE 12 to the Knox/Keya Paha County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: That portion of the State east of the High Plains Zone and bounded by designated highways and political boundaries starting on U.S. 73 at the Kansas border, north to NE 67, north to U.S. 75, north to NE 2, west to NE 43, north to U.S. 34, east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I-80; west to Hamilton/Hall County line (Gunbarrel Road), south to Giltner Road; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northeasterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County, west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler County; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east along U.S. 30 to U.S. 75, north along U.S. 75 to the Washington/Burt County line; then east along the county line to the Iowa border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I-40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I-94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I-40, east along I-40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I-35, north along I-35 to U.S. 60, west along U.S. 60 to U.S. 64, west along U.S. 64 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I-90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to SD 15, then north along SD 15 to Big Stone Lake at the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I-10 to Louisiana border at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, Washakie, and that portion of Park County south of T58N and not within the boundary of the Shoshone National Forest.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along

the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Maryland

Special Regular and Late Seasons for Canada Geese: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

Massachusetts

Special Area for Canada Geese: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

New Hampshire

Same zones as for ducks.

New Jersey

Special Area for Canada Geese:

North - that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South - that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River (at Pleasant Mills); then north (upstream) along the Mullica River to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then south along Route 49 to Route 50; then east along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Special Late Season Area for Canada Geese: that area of Chemung County lying east of a continuous line extending south along State Route 13 from the Schuyler County line to State Route 17 and then south along Route 17 to the New York-Pennsylvania boundary; all of Tioga and Broome Counties; that area of Delaware, Sullivan, and Orange Counties lying southwest of a continuous line extending east along State Route 17 from the Broome County line to U.S. Route 209 at Wurtsboro and then south along Route 209 to the New York-Pennsylvania boundary at Port Jervis, excluding areas on or within 50 yards of the Delaware River between the confluence of the West Branch and East Branch below Hancock and the mouth of the Shingle Kill (3 miles upstream from Port Jervis); that area of Orange, Rockland, Dutchess, Putnam and Westchester Counties lying southeast of a continuous line extending north along Route 17 from the New York-New Jersey boundary at Suffern to Interstate Route 87, then north along Route 87 to Interstate Route 84, then east along Route 84 to the northern boundary of Putnam County, then east along that boundary to the New York-Connecticut boundary; that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line

extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

Regular Season Area in Southwest for Canada Geese: all of Allegany, Cattaraugus, and Chautaugua Counties; that area of Erie, Wyoming and Niagara Counties lying south and west of a continuous line extending from the Rainbow Bridge below Niagara Falls, north along the Robert Moses Parkway to US Route 62A, then east along Route 62A to US Route 62, then southeast along US Route 62 to Interstate Route 290, then south along Route 290 to Exit 50 of the NYS Thruway, then east along the Thruway to Exit 49, then south along NYS Route 78 to State Route 20 in Depew, then east along Route 20 to State Route 77 in Darien Center, then south along Route 77 to Java Center, then south along State Route 98 to the Cattaraugus County line; and that area of Steuben and Chemung Counties lying south of State Route 17.

North Carolina

Regular Season for Canada Geese: Statewide, except for Northampton County and the Northeast Hunt Unit - Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

Regular Season Area for Canada Geese: Area from New York State line west of U.S. Route 220 to intersection of I-180, west of I-180 to intersection of SR 147, west of SR 147 to intersection of U.S. Route 322, west of U.S. Route 322 to intersection of I-81, west of I-81 to intersection of I-83, west of I-83 to I-283, west of I-283 to SR 441, west of SR 441 to U.S. Route 30, west of U.S. Route 30 to I-83, west of I-83 to Maryland State line, except for the Counties of Erie, Mercer, Butler, and Crawford.

Special Late Season Area for Canada Geese: Same as Regular Season Area and the area from New York State line east of U.S. Route 220 to intersection of I-180, east of I-180 to intersection of SR 147, east of SR 147 to intersection of U.S. Route 322, east of Route 322 to intersection of I-81, north of I-81 to intersection of I-80, north of I-80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Virginia

Regular and Special Late Season Area for Canada Geese: All areas west of I-95.

Back Bay Area—Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I-69, westerly along I-69 to Michigan Highway 21, westerly along Michigan 21 to I-96, northerly along I-96 to I-196, westerly along I-196 to Lake Michigan Drive (M-45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the South Zone north of the Southern Michigan GMU, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I-94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Lake Erie SJBP Zone: That portion of the State encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I-280, south along I-280 to I-80, and east along I-80 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of

Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I-90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I-25 from the Wyoming border south to I-70; west on I-70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Kansas

Light Geese

Unit 1: That portion of Kansas east of a line beginning at the intersection of the Nebraska border and KS 99, extending south along KS 99 to I-70 to U.S. 75, south on U.S. 75 to U.S. 54, west on U.S. 54 to KS 99, and then south on KS 99 to the Oklahoma border.

Unit 2: The remainder of Kansas, lying west of Unit 1.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S 169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I-35, I-35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I-70, I-70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

Nebraska

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and NS 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra County and that portion of Socorro County lying south of the Sevilleta National Wildlife Refuge Boundary.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND

200, east to ND 31, south to ND 25, south to I-94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Dark Geese

Unit 1: Statewide except for Units 2 and 3.

Unit 2: Brule, Buffalo, Campbell, Dewey, Hughes, Hyde, Lyman, Potter, Stanley, Sully, and Walworth Counties and that portion of Corson County east of State Highway 65.

Unit 3: Charles Mix and Gregory Counties.

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth; northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and that portion of Park County south of T58N.

Area 2: Platte County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties and those portions of Carbon County east of the Continental Divide and Park County north of T58N.

Area 4: Goshen County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I-5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45-162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I-5; southerly on I-5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I-84, and south and west of I-84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I-84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific Flyway portion of New Mexico located south of I-40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I-5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I-5; then south on I-5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos, Curry, Douglas and Lane Counties west of US 101.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Road, south on Pinto Ridge Road to WA 28, east on WA 28 to the Stratford Road, south on the Stratford Road to WA 17, south on WA 17 to the Grant-Adams County line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I-182, west o I-182 to the Franklin-Benton County line; those parts of Benton County south of I-182 and I-82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanongan, Douglas, and Kittitas Counties and those parts of Grant, Adams, Franklin, and Benton Counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark, except portions south of the Washougal River, Cowlitz, Pacific, and Wahkiakum Counties.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I-5 Bridge near Vancouver, Washington; north on I-5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Beadle, Brookings, Brown, Campbell, Clark, Codington, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hughes, Hyde, Kingsbury, Marshall, McPherson, Potter, Roberts, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box, Elder, Weber, Davis, Salt Lake, and Toole Counties lying south of State Hwy 30, I-80/84, west of I-15, and north of I-80.

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Part III

Securities and Exchange Commission

17 CFR Part 240

Amendments to Rules on Shareholder Proposals; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39093; IC–22828; File No. S7–25–97]

RIN 3235–AH20

Amendments to Rules on Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''we'' or ''Commission'') proposes revisions to the rule that opens, and then regulates, a channel of communication among shareholders, and between shareholders and the management of their companies: rule 14a–8, the shareholder proposal rule. We propose to recast rule 14a–8 into a Question & Answer format that both shareholders and companies should find easier to follow, and to modify the rule to address concerns raised by both shareholders and companies. We also propose revisions to related rules.

DATES: Public comments are due November 25, 1997.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Comment letters can be sent electronically to the following e-mail address: rule-comments@sec.gov. The comment letter should refer to File No. S7–25–97; if e-mail is used please include the file number in the subject line. Anyone can inspect and copy the comment letters in the SEC's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Frank G. Zarb, Jr., Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900, or Doretha M. VanSlyke, Division of Investment Management, at (202) 942–0721, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to the following rules under the Securities Exchange Act of 1934 (the ''Exchange Act''):[1] 14a–8,[2] 14a–4,[3] 14a–5,[4] 14a–2,[5] and 13d–5.[6]

I. Executive Summary

The shareholder proposal rule provides an avenue for communication between shareholders and companies, and among shareholders themselves. Like any other well-traveled road, however, the rule is in need of some repair. These proposals accordingly are designed to rectify problems identified by both shareholders and corporations.

The proposals today would make it easier for shareholders to include a broader range of proposals in companies' proxy materials, and provide companies with clearer ground rules and more flexibility to exclude proposals that failed to attract significant shareholder support in prior years. We are proposing a ''package'' of reforms that we believe best accommodates the concerns of most participants in the shareholder proposal process, including proposals to accomplish the following:

- Recast the rule into a more understandable Question & Answer format;
- Reverse the *Cracker Barrel* policy, making it easier for shareholders to include in companies' proxy materials employment-related proposals that raise significant social policy matters;
- Make it more difficult to present proposals again that received an insignificant percentage of the votes cast on earlier submissions, enhancing shareholders' ability to decide for themselves which proposals are important to the company;
- Introduce an ''override'' mechanism permitting 3% of the share ownership to override a company's decision to exclude a proposal under certain of the bases for exclusion;
- Adopt a new qualified exemption from the proxy rules under Section 14(a) of the Exchange Act, and a safe harbor under Section 13(d) of the Exchange Act and rule 13d–5, to make it easier for shareholders to use the new ''override;''
- Streamline the exclusion for matters considered irrelevant to corporate business, to permit companies to exclude proposals that relate to economically insignificant portions of their businesses;
- Streamline our administration of the rule whereby companies are permitted to exclude proposals furthering personal grievances or special interests; and
- Provide clearer ground rules for management's exercise of discretionary voting authority when a shareholder notifies the company that it intends to present a proposal outside the mechanism of rule 14a–8.

II. Introduction and Background

Rule 14a–8 provides, and then regulates, a channel of communication among shareholders, and between shareholders and companies. It is not the only avenue for communication, since a shareholder may undertake an independent proxy solicitation or may seek informal discussions with management or other shareholders outside the proxy process. Rule 14a–8 is popular because it provides an opportunity for any shareholder owning a relatively small amount of the company's shares to have his or her own proposal placed alongside management's proposals in the company's proxy materials for presentation to a vote at an annual or special meeting of shareholders.

The rule's operation is fairly simple. A shareholder must mail a copy of his or her proposal to the company in time to meet the deadline imposed by the rule.[7] If the company intends to omit the proposal from its proxy materials, it must first submit its reasons to the Commission.[8] The Division of Corporation Finance or Division of Investment Management (the ''Division'') usually issues a written response either concurring or declining to concur with the company's reasoning.[9] The Division's response is not legally binding, and does not necessarily reflect the view of the Commission.[10] Either party may obtain a legally binding decision on the excludability of a challenged proposal from a federal court.

Proposals are considered appropriate for inclusion in proxy materials under rule 14a–8 unless the company demonstrates that the proposal falls within one of thirteen bases for exclusion, or that the shareholder

[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.14a–8.

[3] 17 CFR 240.14a–4.

[4] 17 CFR 240.14a–5.

[5] 17 CFR 240.14a–2.

[6] 17 CFR 240.13d–5.

[7] Rule 14a–8(a)(3) [17 CFR 240.14a–8(a)(3)].

[8] Rule 14a–8(d) [17 CFR 240.14a–8(d)].

[9] The Division of Corporation Finance has reviewed approximately 400 submissions under rule 14a–8 annually. The Division of Investment Management typically has reviewed fewer than 12 submissions from investment companies in previous years; shareholder proposals have only infrequently been submitted to investment companies, and those submitted have usually involved closed-end investment companies.

[10] The procedures on the rendering of staff advice for shareholder proposals are explained in Exchange Act Release No. 12599 (July 7, 1976) (41 FR 29989). These proposals do not alter the procedures set forth in that release.

proponent is otherwise ineligible to submit a proposal. A company may, for example, omit a shareholder proposal that is not a proper matter for shareholder action under state law,[11] or if the shareholder fails to demonstrate that he or she continuously held $1000 worth of the company's voting securities for at least one year prior to submitting a proposal.[12]

Between 300 and 400 companies typically receive a total of about 900 shareholder proposals each year.[13] Their subjects vary. A majority of the proposals each year focus on corporate governance matters—such as proposals to repeal by laws establishing a classified board of directors—and on compensation matters—such as proposals to eliminate pension plans for non-employee directors. Social policy issues, such as environmental matters or the manufacture of tobacco products, and other issues, such as extraordinary business transactions, are also the focus of a significant number of proposals each year.

While we believe that the rule works well overall, some shareholder and corporate groups have expressed concerns about certain aspects of the rule and how it operates. Some shareholders seek to broaden the subject matter categories of proposals that companies are required to include in their proxy statements,[14] focusing in particular on a 1992 no-action letter issued to Cracker Barrel Old Country Store, Inc.[15] In the Cracker Barrel letter, the Division announced a new ''bright line'' test for analysis of employment-related shareholder proposals that raise significant social policy issues.[16] Some shareholders want that test changed.

Just as some shareholders have expressed concern that the rule permits companies to exclude important proposals, some companies in turn believe that the rule and current interpretations of the rule compel them to include too many proposals of little relevance to their businesses.[17] Some companies suggest that the problem be addressed by an increase in the amount of stock a shareholder must hold to be eligible to submit a proposal, or in the percentage of the vote a proposal must receive to qualify for re-submission in future years.[18] Among companies responding to the Questionnaire, 40% rank as a top reform goal reduction of the types of proposals that they must include in their proxy materials.

Companies also seek additional guidance on their exercise of discretionary voting authority[19] when a shareholder notifies them of his or her intention to present proposals without invoking rule 14a–8.[20] And they raise other concerns about the operation of the rules governing shareholder proposals.[21]

Congress recently required that we conduct a comprehensive study of the shareholder proposal process, and submit a report on the results of the study by October 11, 1997.[22] We began the study in February 1997 with the distribution of a Questionnaire on shareholder proposals. While we did not design the Questionnaire to obtain a scientific sampling, it provided us with some indication of the views of interested shareholders and companies, including those who do not typically express their views to the Commission.[23] In addition, the Commission staff has held discussions with interested groups, and tapped its own reservoir of experience and knowledge about the rule.

Although we have considered some fundamentally different approaches to regulating the shareholder proposal process, the proposals today reflect our belief that most participants would prefer that we maintain the current system, with modifications. We request your comments on whether our view is correct, and on whether we should consider some other approach in lieu of the amendments proposed today.

We could, for instance, withdraw entirely from the area, leaving it to each state to adopt its own shareholder proposal rule to govern what proposals are appropriate to be included in companies' proxy materials. The shareholder proposal process affects the internal governance of corporations, and it is state law—not federal securities law—which is primarily concerned with corporate governance matters. In its current form, rule 14a–8 in fact defers to state law on the central question of whether a proposal is a proper matter for shareholder action.[24] The ''ordinary business'' exclusion[25] is based in part on state corporate law establishing spheres of authority for the board of directors on one hand, and the company's shareholders on the other.[26]

[11] Rule 14a–8(c)(1) [17 CFR 240.14a–8(c)(1)].

[12] Rule 14a–8(a)(1) [17 CFR 240.14a–8(a)(1)].

[13] See American Society of Corporate Secretaries (''ASCS''), Report on Shareholder Proposals, July 1, 1995–June 30, 1996; IRRC Summary of 1996 U.S. Shareholder Resolutions, Apr. 12, 1997. The IRRC tracks proposals at approximately 1,500 companies each year, and the ASCS monitors proposals at approximately 1,950 public companies. A company is not required to contact the Commission staff unless it intends to omit the proposal from its proxy materials.

[14] In response to a questionnaire on shareholder proposals which we distributed last February (the ''Questionnaire''), 63% of shareholder respondents ranked as a top goal of reform expanding the categories of proposals that companies must include in their proxy materials. As discussed more fully below, the Commission staff prepared the Questionnaire as part of a Congressionally-mandated study of the shareholder proposal process.

[15] See, *e.g.*, Rulemaking Petition dated July 27, 1995, submitted to the Commission by the Interfaith Center on Corporate Responsibility, Calvert Group Ltd., and the Comptroller of the City of New York. The petition asked that the Commission modify its position announced in the no-action letter Cracker Barrel Old Country Store, Inc. (Oct. 13, 1992) (''*Cracker Barrel*'') (proposal that company implement employment practices related to sexual orientation). The proposals address the concerns raised by the petition. See Section III, Part D of this release.

[16] *Cracker Barrel.* The Commission subsequently upheld the Division's response. See Letter dated January 15, 1993 from Jonathan G. Katz, Secretary to the Commission, to Sue Ellen Dodell, Deputy Counsel, Office of Comptroller, The City of New York.

[17] See *e.g.*, Response of Porter Lavoy & Rose Inc., No. 31; The Finova Group, No. 61; Boise Cascade Corp., No. 163; Allied Signal Inc., No. 184; Intel Corporation, No. 216; RJR Nabisco, Inc., No. 207; The Proctor & Gamble Company, No. 264. The responses are available for inspection and copying in file number S7–5–97.

[18] See, *e.g.*, Response of Roanoke Electric Steel Corp, No. 44; Cooper Industries, No. 174; Carolina Power and Light Co., No. 156; Eastman Kodak Company, No. 268.

[19] Discretionary voting authority is the ability to vote proxies that shareholders have executed and returned to the company, on matters not reflected on the proxy card, and on which shareholders have not had an opportunity to vote.

[20] See, *e.g.*, Response of Gannett Co., Inc., No. 117; Questar Corp., No. 18; Albertson's Inc., No. 204; CNF Transportation, No. 11; Safety-Kleen Corp., No. 180; Honeywell Inc., No. 198.

[21] The American Trucking Associations (''ATA''), for instance, recently petitioned the Commission to amend rule 14a–8(c)(4), the personal grievance exclusion, to ''prevent labor unions from continuing to use the shareholder proposal process to advance union interests not shared by the target company's shareholders' generally.'' Rulemaking Petition dated October 13, 1995 submitted to the Commission by the ATA. The Commission considered the ATA's concerns in connection with these proposals. Section III, Part B, describes proposed modifications to the way we administer current rule 14a–8(c)(4).

[22] National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, § 510(b), 110 Stat. 3416 (1996). The Commission is required to study ''(A) whether shareholder access to proxy statements pursuant to section 14 of the Securities Exchange Act of 1934 has been impaired by recent statutory, judicial, or regulatory changes; and (B) the ability of shareholders to have proposals relating to corporate practices and social issues included as part of proxy statements.''

[23] We received a total of 330 responses, including 172 responses from companies, and 149 from individual and institutional shareholders. We also heard from a handful of other types of institutions, such as a proxy solicitation firm, an investor relations consulting firm, and an economic consulting firm. You may inspect and copy completed Questionnaires in our Public Reference Room, public file number S7–5–97.

[24] Rule 14a–8(c)(1).

[25] Rule 14a–8(c)(7) [17 CFR 240.14a–8(c)(7)].

[26] States likely do not currently have appropriated procedures in place to accommodate such an approach. We could retain rule 14a–8 for a period of time, such as 3 or 6 years, to permit states to

Continued

In 1982, the Commission proposed for comment fundamental alternatives to the existing shareholder proposal rule, although it did not propose leaving the matter up to the states. Under one proposal, the Commission would have adopted a supplemental rule to permit a company and its shareholders to adopt a plan providing their own alternative procedures governing the process. Another alternative would have required companies to include in their proxy materials all proposals that are proper under state law and that do not involve the election of directors, subject to a numerical maximum. Most of those who expressed views on the 1982 proposals rejected the proposed alternatives, and the Commission adopted revisions that left the rule essentially in its current form.[27]

We believe that it is worthwhile to consider whether there is a workable alternative approach to the current rule and process. Among other things, the current rule in effect places the Commission and its staff in the role of informal arbiter between companies and shareholders submitting a growing variety of shareholder proposals. In implementing rule 14a–8, the Commission and its staff are sometimes called upon to make difficult judgments about the proper interpretation of proposals and about the matters to which they relate. Should these judgments be made by institutions other than the Commission, or by the shareholders and companies themselves? Your comments are welcome on these matters.

Despite these considerations, the results of the Questionnaire appear to support the view that most participants would prefer that we maintain the current system, possibly with modifications. The Questionnaire sought views on a number of different alternatives to the existing system, none of which appeared to receive strong support from respondents. For instance, the Questionnaire asked about a system like that discussed above where states would be urged to adopt their own shareholder proposal rules in place of rule 14a–8; and about a system where each company would be permitted to adopt its own shareholder proposal rule, subject to shareholder approval. Neither shareholders nor companies appeared to favor these approaches.[28]

The Questionnaire also asked about another approach that would have substantially restricted companies' ability to exclude proposals, but would have placed a numerical cap on the total number of proposals that a company would be required to include in its proxy materials. The results were mixed. Many companies supported the approach, while most shareholders did not.[29]

The Questionnaire also asked whether respondents would prefer the existing system, with possible modifications, to some other alternative not identified in the Questionnaire. Most preferred retaining the existing system.[30]

The results also reflected some support for the Commission's continued involvement in the shareholder proposal process. Most shareholders and a number of companies responding to the Questionnaire indicated that the Commission's role should be expanded or stay the same.[31]

III. Proposed Amendments

We view the various reforms proposed today as a ''package'' designed to address in a balanced manner the sometimes conflicting concerns of different participants. Your comments should therefore focus not only on whether we should adopt each proposal viewed in isolation, but also on whether we should adopt the proposal as part of an overall package.

Part A below describes the proposed Question & Answer format for revised rule 14a–8, and clarifying language changes. Part B addresses our proposal to change the way the Division applies rule 14a–8(c)(4)[32], which permits companies to exclude proposals furthering personal grievances or special interests. Proposed amendments to rule 14a–8(c)(5)[33], the ''relevance'' exclusion, are explained in Part C. Part D describes how we propose to modify our interpretation of rule 14a–8(c)(7), which permits companies to exclude proposals relating to their ''ordinary business operations.'' In Part E, we describe proposed modifications to rule 14a–8(c)(12),[34] which permits companies to exclude proposals that received less than specified percentages of voting support on earlier submissions.

Part F describes a proposed mechanism to permit shareholders to ''override'' certain bases for excluding proposals. Part G addresses a proposed safe harbor from Section 13(d),[35] and a qualified exemption from the proxy rules, for shareholders using the proposed ''override'' described in Part F. Part H describes proposed revisions to rule 14a–4(c)[36] designed to establish clearer guidelines for the exercise of discretionary voting authority when a company receives advance notice that a shareholder intends to present a proposal for a vote without invoking rule 14a–8's mechanism. Finally, in Part I, we explain some other proposed amendments to rules 14a–8 and 14a–5.

A. Plain-English, Question & Answer Format

We propose to amend and recast Rule 14a–8 into a Question & Answer format so that the hundreds of shareholders and companies who refer to the rule each year can more easily understand its requirements.[37] We request your comments on whether the proposed revisions on the whole would make the rule easier to understand. Should we instead retain the format and style of the current rule?

Your comments should also address each of the proposed revisions individually. Except as specifically noted here, or elsewhere in Section III of this release, most of the proposed language modifications are intended solely to make the requirements easier to understand and follow, and not to result in substantive modifications. Some proposed revisions described in this Part A, however, are intended to reflect current Division or Commission interpretations of the rule. Your

adopt necessary procedures, if we decide to pursue this approach.

[27] See Exchange Act Release No. 20091 (Aug. 16, 1983) (the ''1983 Release'') [48 FR 38218].

[28] One percent of shareholder respondents and 47% of company respondents favored, and 93% of shareholders and 49% of companies disfavored, allowing each company to set up its own shareholder proposal process. Eighty-nine percent of shareholders, and an equal percentage of companies, disfavored replacing rule 14a–8 with state-adopted systems, while only 8% of companies and 5% of shareholders favored the approach.

[29] Sixty-three percent of company respondents and 9% of shareholder respondents supported the approach, while 34% of companies and 86% of shareholders disfavored it.

[30] Seventy-three percent of company respondents and 75% of shareholder respondents preferred the existing system either without reform or with other reforms. Only 6% of companies and 4% of shareholders, preferred some other alternative.

[31] Fifty-four percent of shareholder respondents and 47% of company respondents indicated that they believed the Commission's role would either increase or stay the same. Twenty-six percent of shareholders and 49% of companies indicated that our role should be diminished, and only 1% of shareholders and 8% of companies thought it should be eliminated. Additionally, 64% of shareholder respondents and 74% of companies indicated their belief that the Commission's role as informal ''referee'' in the shareholder proposal process is beneficial.

[32] 17 CFR 240.14a–8(c)(4).

[33] 17 CFR 240.14a–8(c)(5).

[34] 17 CFR 240.14a–8(c)(12).

[35] 15 U.S.C. 78m(d).

[36] 17 CFR 240.14a–4(c).

[37] The existing rule may be confusing for shareholders who may have had little or no prior experience dealing with our rules. In response to the Questionnaire, 65% of individual shareholder respondents indicated that they do not believe that shareholders generally understand the current shareholder proposal rule.

comments should address whether each proposed language modification makes the rule more understandable, whether some other revision would be more appropriate, and whether the proposed modification is consistent with current interpretations.

Most of the current rule's procedural and eligibility requirements would appear in the answers to Questions 2 through 8, and 12. We also proposed revisions to some of the thirteen bases upon which a company may rely for excluding a proposal, which appear in paragraph (c) of current rule 14a–8. The bases would now appear in the answer to Question 9.

In current paragraph (c)(1), permitting exclusion of proposals that are not proper subjects for shareholder action under state law, the reference to the ''laws of the issuer's domicile'' would be replaced by a reference to ''the laws of the state of the company's incorporation,'' which we have applied to have the same meaning. We would revise the note to the paragraph to reflect the Division's current practice of assuming that a proposal drafted as a recommendation or request is proper unless the company demonstrates otherwise.

We propose to make only minor plain-English revisions to current paragraph (c)(2),[38] replacing the word ''require'' with the word ''cause'' and moving to a ''note'' the portion of the current paragraph discussing the priority accorded domestic laws. We request your comments on whether some other formulation would make this paragraph easier to understand and follow, and whether the revisions appear consistent with current interpretations.[39]

Current paragraph (c)(3)[40] would be amended to eliminate the reference to ''regulations'' because it is redundant. We request your comments on whether this revision would make the rule clearer, or whether some other revisions would make the rule easier to understand and follow.

A proposed modification of the way we administer current paragraph (c)(4), and revisions to current paragraph (c)(5), are described in Parts B and C below.

As proposed, current paragraph (c)(6)[41] would be revised to permit exclusion ''[i]f the company would lack the power or authority to carry out the proposal.'' We believe that the revised language is clearer, without altering the meaning of the paragraph, which currently permits exclusion of proposals that are ''beyond the registrant's power to effectuate.'' We request your comments on whether some other revision would make the rule easier to understand and follow, and whether the revision appears consistent with current interpretations of the rule.[42]

Current paragraph (c)(7) permits the exclusion of proposals relating to a company's ''ordinary business operations.'' We recognize that the term ''ordinary business'' is a legal term of art that provides little indication of the types of matters to which it refers. We therefore propose to revise the paragraph to permit exclusion ''if the proposal relates to specific business decisions normally left to the discretion of management.'' The revised rule would provide a list of examples, which is not exclusive, including the way a newspaper formats its stock tables, whether a company charges an annual fee for use of its credit card, the wages a company pays its non-executive employees, and the way a company operates its dividend reinvestment plan. For an investment company, an example is a decision whether to invest in the securities of a specific company.

These proposed revisions are intended to make the ''ordinary business' exclusion easier to understand, not to modify current interpretations. We request comments on whether the examples of excludable matters provided are helpful and appropriate, and whether some other examples than the ones proposed would be more helpful. We also request your comments on the degree to which the proposed formulation would be consistent with current interpretations.[43]

We also request your comments on whether some other revision would be preferable. We could, for instance, retain the existing language, with or without additional guidance on its meaning. An example of this approach would be to revise current paragraph (c)(7) to permit omission of a proposal ''if it deals with a matter relating to the conduct of the company's ordinary business operations (matters that should be left to the discretion of the company's managers because of their complexity, impracticability of shareholder participation, or relative insignificance).'' Would this formulation be preferable to the current or proposed approach, and be consistent with current interpretations of the rule?

The proposed revisions to current paragraph (c)(8)[44] are designed to reflect the current interpretation that the rule applies only to proposals on elections of individuals for membership to, and removal from, the board of directors.[45] We propose to revise current paragraph (c)(9)[46] to reflect the Division's long-standing interpretation permitting omission of a shareholder proposal if the company demonstrates that its subject matter directly conflicts with all or part of one of management's proposals.[47] We request your comments on whether some other revision would make these rules easier to understand and follow, and whether the revisions appear consistent with current interpretations of the rules.

Current paragraph (c)(10),[48] permitting exclusion of ''moot'' proposals, would be revised to reflect the Commission's interpretation permitting exclusion of proposals that have been ''substantially implemented.''[49] Only minor stylistic revisions would be made to paragraph (c)(11)[50], which permits omission of substantially duplicative proposals. Although we significantly revised current paragraph (c)912),[51] the rule restricting resubmission of certain proposals, the only substantive proposed modifications to the paragraph are described in Part E below. We request your comments on whether the current rules are preferable, or whether some other revision would make the rules easier to understand and follow, and whether the proposed revisions appear consistent with current interpretations of the rules.

Finally, the rule as proposed to be revised would permit both companies and shareholders to send their rule 14a–8 submissions to the Commission by

[38] 17 CFR 240.14a–8(c)(2).

[39] See, *e.g.*, *Firestone* (Dec. 8, 1987).

[40] 17 CFR 240.14a–8(c)(3).

[41] 17 CFR 240.14a–(c)(6).

[42] See, *e.g.*, *SCECorp* (Dec. 20, 1995) (proposal that third party fiduciary trustees amend discretionary voting agreements).

[43] See the summary of the principal considerations in the application of the ''ordinary business'' exclusion in Part D below.

[44] 17 CFR 240.14a–8(c)(8).

[45] See, *e.g.*, *Cornerstone Properties, Inc.* (Mar. 8, 1996) (proposal nominating proponent for election to company's board of directors).

[46] 17 CFR 240.14a–8(c)(9).

[47] See, *e.g.*, *General Electric Corporation* (Jan. 28, 1997) (shareholder proposal requiring company to modify stock option plans conflicted with company proposal); *Northern States Power Co.* (July 25, 1995) (shareholder proposal counter to management's).

[48] 17 CFR 240–14a–8(c)(10).

[49] 1983 Release Consistent with that release, in order to have been ''substantially implemented,'' the company must have actually taken steps to implement the proposal. It is insufficient for the company to have merely considered the proposal, unless the proposal clearly seeks only consideration by the company, and not necessarily implementation.

[50] 17 CFR 240.14a–8(c)(11). See, *e.g.*, *Detroit Edison* (Jan. 16, 1996).

[51] See, *e.g.*, *Gannett Co.* (Feb. 12, 1996).

electronic mail. That option is not currently available.

B. Personal Claim or Grievance Exclusion: Rule 14a–8(c)(4)

We propose to modify the application of rule 14a–8(c)(4), which permits companies to exclude proposals relating to ''a personal claim or grievance against the registrant or any other person, or if it is designed to result in a benefit to the proponent or to further a personal interest, which benefit or interest is not shared by the other security holders at large.'' The goal of paragraph (c)(4) is straightforward: to screen out proposals designed to further a personal grievance or a special interest, since such proposals are unlikely to further the interests of all shareholders at large.[52] The Commission has recognized, however, that the exclusion is ''[p]erhaps the most subjective provision and definitely the most difficult for the staff to administer'' because it ''requires the staff to make determinations essentially involving the motivation of the proponent in submitting the proposal.'' [53]

Application of the exclusion is particularly difficult when the proposal is neutral on its face, meaning that the proposal itself does not by its terms relate to a personal grievance or special interest of the proponent. In those situations, the Division must make factual determinations, sometimes involving the proponent's or the company's credibility, based normally on circumstantial evidence presented in the parties' submissions.[54] In practice, the Division has infrequently concurred in the exclusion of a ''neutral'' proposal under rule 14a–8(c)(4).

We propose to modify the way the Division applies the rule so that the staff would concur in the exclusion of a proposal on this ground only if the proposal (including any supporting statement) on its face relates to a personal grievance or special interest. While a company would still be required to make a submission under rule 14a–8 if it intends to omit a ''neutral'' proposal under paragraph (c)(4), the Division would automatically express ''no view,'' rather than concur or decline to concur in its exclusion.

We propose this new approach because we recognize that the basic policy underlying paragraph (c)(4) is equally applicable to proposals that are neutral on their face. The proposed modification of the way we administer the rule merely reflects our appreciation that the Division's ability to make the necessary factual findings is limited in the context of such a proposal. Companies receiving ''no view'' responses could elect to omit the proposal if they believe they possess adequate factual records to demonstrate the personal grievance or interest. However, the Commission and its staff would not make that determination.

While this is a change in the Division's administration of the rule, we nevertheless request your comments on whether we should implement this change, including whether it would lead to abuse by either shareholders or companies.

C. Rule 14a–8(c)(5): The ''Relevance'' Exclusion

We propose to narrow and clarify the operation of rule 14a–8(c)(5), which is often called the ''relevance'' exclusion because its primary purpose is to screen out proposals that are of little or no economic relevance to the company and its business. Currently, the rule permits companies to exclude a proposal relating to

> operations which account for less than 5 percent of the registrant's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the registrant's business.

Since its adoption, the rule has suffered from the inherently subjective nature of the ''otherwise significantly related'' standard. The Commission has considered more objective tests. In 1976, for example, the Commission considered a purely economic test for determining a proposal's relevance, but rejected the idea largely out of recognition that some matters, such as cumulative voting rights or the ratification of auditors, may be important to the company despite the unavailability of a quantifiable economic value.[55] The Commission nonetheless recognized that there were ''circumstances in which economic data may indicate a valid basis for omitting a proposal under this provision.'' [56]

Realizing that the rule continued to suffer from imprecision, the Commission revised it in 1983 to add the specific 5% economic test and to modify the reference to ''significantly related'' matters.[57] Thus, if the subject of the proposal represented less than 5% of total assets, gross sales, and net earnings, the proponent could avoid exclusion of a proposal by demonstrating that the proposal is ''otherwise significantly related'' to the company's business.[58]

Largely as a result of the subjectivity of the ''otherwise significantly related'' language, that portion of the rule frequently overshadows the 5% economic standard. Thus, even if a proposal represents less than 5% of the company's total assets, net earnings, and gross sales, the proponent often can satisfy the ''otherwise significantly related'' part to defeat the company's reliance on the rule. In the period between September 30, 1996, and the date of this release, only two companies successfully invoked the rule to exclude proposals.[59]

The rule as revised would apply a purely economic standard. The exception for proposals that are ''otherwise significantly related'' would be deleted. A company would be permitted to exclude proposals relating to matters involving the purchase or sale of services or products that represent $10 million or less in gross revenue or total costs, whichever is appropriate, for the company's most recently completed fiscal year. However, an economic threshold lower than $10 million would apply if 3% of the company's revenue or total assets (whichever is higher), for its most recently completed fiscal year, results in a number lower than $10 million.

For instance, assume a proposal relates to a single retail store operated by a company with multiple stores, and the store generated $4 million in gross revenue for the company' most recently completed fiscal year. Because $4 million is less than $10 million, the company would be permitted to exclude the proposal unless the exception in the second part of the rule applies. However, because the company's gross revenue worldwide for the last completed fiscal year was $500 million, and its total assets totalled $400 million, the exception would not apply in this example. Three percent of the company's gross revenue for the relevant period (the higher number)

[52] Exchange Act Release No. 19135 (Oct. 14, 1982) [47 FR 47420].

[53] *Id.*

[54] See, *e.g.*, *Service Corporation Int'l* (Feb. 28, 1997) (company pointed to proponent's history of harassment as indicative of a personal claim or grievance); *Nortek Inc.* (Aug. 13, 1996) (staff did not concur with company's view that proposal requesting recision of a bylaw was excludable under rule 14a–8(c)(4)).

[55] Exchange Act Release No. 12999 (Nov. 22, 1976) [49 FR 52994].

[56] *Id.*

[57] 1983 Release; see also Exchange Act Release No. 19135 (Oct. 14, 1982).

[58] The proponent carries the burden of demonstrating that the proposal is ''otherwise significantly related.'' See Exchange Act Release No. 19135 (Oct. 14, 1982).

[59] *Atlantic Richfield Company* (Jan. 28, 1997) (proposal on company's operations in Myanmar); *La Jolla Pharmaceutical Company* (Feb. 18, 1997) (proposal on use of human fetal tissue).

amounts to $15 million—a number greater than $10 million. If it resulted in a lower number, that number would be the applicable threshold.

In response to the Questionnaire, companies stated that rule 14a–8 operates in a manner that requires them to include too many proposals of little or no relevance to their businesses.[60] We believe that the proposed revisions address this concern by establishing clearer, more predictable criteria for excluding proposals. The proposed revisions should also make it easier for companies to exclude economically insignificant proposals. The approach would appear to balance the various competing concerns, since under the proposed revision companies may also be unable to exclude some proposals—with relatively greater economic significance—that they are currently permitted to omit under the existing 5% test.

There would be four safeguards to prevent the revised rule from precluding proposals that may be significant to the company despite a low quantifiable value. First, the exclusion would apply only to proposals relating to quantifiable matters, such as operations in a specific foreign country, a specific product line, or a specific retail store or set of stores. It would not apply to proposals where quantification is impracticable or unreliable, such as proposals on cumulative voting, or the ratification of auditors.

Second, the economic threshold in the proposed rule has been reduced significantly from the threshold in current rule 14a–8(c)(5) to counter-balance the elimination of the ''otherwise significantly related'' portion of the current rule. The economic thresholds that would apply under the proposed rule would be the lesser of either $10 million in gross revenues or total costs (which is appropriate), or 3% of gross revenues or total assets (whichever is higher).

We recognize that $10 million may be economically significant for some smaller companies. That is why we propose the alternative 3% test which would make it more difficult to exclude proposals at smaller companies. The alternatives test could operate only to reduce the $10 million threshold, not to increase the threshold.

Third, the exclusion would apply only to proposals relating to the purchase or sale of products and services. This qualification is designed to help ensure that the exclusion is applied only to distinct operational matters relating to the company's business activities, and not to matters involving the company's internal governance, such as voting procedures for the board of directors.

Finally, we believe that any inflexibility that may result from adoption of a purely economic standard would be mitigated by the adoption of the ''override'' mechanism described in Part F below. That mechanism would permit a proponent who obtained sufficient shareholder support to override a company's use of current paragraph (c)(5) if he or she believed that it permitted exclusion of an important proposal.

We request your comments on whether we should consider some other modification of current paragraph (c)(5). For example, instead of eliminating the ''otherwise significantly related'' portion of the current paragraph, should we attempt to clarify and narrow that portion of the rule? Should it refer instead to specific types of proposals that would not be subject to the exclusion, such as corporate governance proposals and/or proposals relating to extraordinary transactions?[61] Should we revise the language to make it less subjective, to refer for instance to proposals where the substantiative action in the resolution relates to matters that under the applicable corporate law can be effectuated only by shareholders or the board of directors, or both acting together? Or should we instead retain the ''otherwise significantly related'' language?

We also request your comments on whether the qualification that the exclusion apply only to matters relating to purchase or sale of goods or services is necessary to ensure that the exclusion is not overly broad? Would some other formulation work more effectively, such as limiting application of the exclusion to matters relating to a company's assets or earnings?

In addition, we solicit your comments on whether economic thresholds other than $10 million in gross revenues or total costs, or 3% of gross revenues or total assets, might be more appropriate. Should there be only one threshold, such as the $10 million threshold, or the 3% threshold, or is it appropriate to have alternative thresholds, as proposed? The 3% test is intended to apply to relatively small companies where the fixed dollar test might be too high. Is that safeguard unnecessary if the fixed dollar threshold is set at a number as low as $10 million? The alternative 3% percent test would operate only to reduce the $10 million threshold, not to increase the threshold. We request your comments on whether the alternative test should also operate to increase the fixed dollar threshold.

Your comments should also address whether the proposed $10 million threshold is too low, so that it would fail to permit omission of economically insignificant proposals. If so, should the threshold be higher, such as $15 million or $25 million? Or would the rule as proposed permit companies to exclude too many proposals? If that is so, should the threshold be lower, such as $1 million, or $5 million? Similarly, should we adopt a percentage threshold lower than the proposed 3%, such as 1% or .5%, or a higher one, such as 5% or 8%?

The proposed $10 million threshold would be based on total costs or gross revenues, whichever is appropriate. Cost appears to be an appropriate measure for some matters, such as supply contracts, while revenue appears more appropriate for others, such as retail operations. Companies would not be permitted to choose between the two measures. For the percentage portion of the exclusion, we believe that a test based alternatively on gross revenues or total assets is warranted because it would apply in the most consistent and meaningful manner among different companies and industries compared to other possible measures. While revenues should in most cases be a consistent measure of size, assets may be a better measure for some types of companies, such as banks.

Should we instead adopt some other basis, or series of bases, for measuring the fixed dollar amount, such as pre-tax income, total assets, gross profit and/or net earnings? Instead of basing the amount on an alternative between two measures—such as revenues or cost—should we base it on only one measure, such as only cost, revenues, or assets? Similarly, we request your comments on whether the percentage portion of the test should be based on a measure other than gross revenues or total assets. Should we instead adopt some other basis, or series of bases, such as pre-tax income, gross profit and/or net earnings?

[60] See Section II above. In addition, of those responding to the Questionnaire, 59% of shareholders, and 54% of companies, ranked either simplification of the shareholder proposal process, or reduction of the cost and time required to participate, as a top goal of reform.

[61] The Questionnaire asked about a reformulation that would permit companies to exclude proposals representing less than 5% of assets, earnings, and sales, unless the proposal relates to corporate governance. Forty-one percent of shareholder respondents and 23% of companies indicated that they would favor such an approach.

D. The Interpretation of Rule 14a–8(c)(7): The ''Ordinary Business'' Exclusion

When adopted in 1953, the ''ordinary business'' exclusion had a fairly straightforward mission: to ''relieve the management of the necessity of including in its proxy material security holder proposals which relate to matters falling within the province of management.'' [62]

That mission became more complicated with the emergence of proposals focusing on social policy issues beginning in the late 1960's. As drafted, the rule provided no guidance on how to analyze proposals relating simultaneously to both an ''ordinary business'' matter and a significant social policy issue.

In 1976, the Commission considered revisions to the ''ordinary business'' exclusion, hoping to fashion more workable language distinguishing between ''mundane'' business matters and ''important'' ones.[63] It declined to adopt the new language after commentators expressed concern that the new language might be overly restrictive and difficult to apply.[64] In lieu of adopting revisions, the Commission stated that it would apply the exclusion in a ''somewhat more flexible manner.'' [65]

In applying the ''ordinary business'' exclusion to proposals relating to social policy issues, the Division applies the most well-reasoned standards possible, given the complexity of the task. From time to time, in light of experience dealing with proposals in particular subject areas, it adjusts its approach. Over the years, for instance, the Division has in several instances reversed its position on the excludability of proposals involving plant closings,[66] the manufacture of tobacco products,[67] executive compensation,[68] and golden parachutes.[69]

Another of these interpretive adjustments is a subject of today's proposals. In a 1992 no-action letter issued to the Cracker Barrel Old Country Stores, Inc.,[70] the Division announced that

> the fact that a shareholder proposal concerning a company's employment policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant. Rather, determinations with respect to any such proposals are properly governed by the employment-based nature of the proposal.

As a basis for the interpretive shift, the Division explained in the letter that

> [n]otwithstanding the general view that employment matters concerning the workforce of the company are excludable as matters involving the conduct of day-to-day business, exceptions have been made in some cases where a proponent based an employment-related proposal on 'social policy' concerns. In recent years, however, the line between includable and excludable employment-related proposals has been increasingly difficult to draw. The distinctions recognized by the staff are characterized by many as tenuous, without substance and effectively nullifying the application of the ordinary business exclusion to employment-related proposals.

The *Cracker Barrel* interpretation has been controversial since it was announced.[71] While the reasons for adopting the *Cracker Barrel* interpretation continue to have some validity, as well as significant support in the corporate community,[72] we believe that reversal of the position is warranted in light of the broader package of reforms proposed today. Reversal will require companies to include proposals in their proxy materials that some shareholders believe are important to companies and fellow shareholders. In place of the 1992 position, the Division would return to its approach to such proposals prevailing before it adopted the position. That is, employment-related proposals focusing on significant social policy issues could not automatically be excluded under the ''ordinary business'' exclusion.

Under this proposal, the ''bright line'' approach for employment-related proposals established by the *Cracker Barrel* position would be replaced by the case-by-case analysis that prevailed previously. Return to a case-by-case approach should redress the concerns of shareholders interested in submitting for a vote by fellow shareholders employment-related proposals raising significant social issues. While this would be a change in the Commission's interpretation of the rule, we nonetheless request your comments on whether we should reverse the *Cracker Barrel* interpretation. Your comments should focus on the proposed interpretive change independently of other proposals as well as part of the overall package of reforms proposed today.

In framing responses, commenters should bear in mind that the *Cracker Barrel* position relates only to employment-related proposals raising significant social policy issues. Reversal of the position would not affect the Division's analysis of any other category of proposals under the exclusion, such as proposals on general business operations. Also, the Division would continue to concur in the exclusion of straightforward employment proposals not raising significant social issues.[73]

Despite return to a case-by-case, analytical approach, some types of proposals raising social policy issues may continue to raise difficult interpretive questions. For instance, reversal of the *Cracker Barrel* position would not automatically result in the inclusion of proposals focusing on wage and other issues for companies' operations in the Maquiladora region of Mexico,[74] or on ''workplace practices.'' [75]

Finally, we believe that it would be useful to summarize the principal considerations in the Division's application of the ''ordinary business'' exclusion. These considerations would continue to impact our reasoning even

[62] Exchange Act Release No. 4950 (Oct. 9, 1953) [18 FR 6646].

[63] Exchange Act Release No. 12598 (Jul. 7, 1976) [41 FR 29982].

[64] Exchange Act Release No. 12999 (Nov. 22, 1976) [41 FR 52994].

[65] *Id.*

[66] See *Pacific Telesis Group* (Feb. 2, 1989).

[67] See *Philip Morris Companies, Inc.* (Feb. 13, 1990).

[68] See *Reebok Int'l Ltd.* (Mar. 16, 1992).

[69] See *Transamerica Corp.* (Jan. 10, 1990).

[70] See *Cracker Barrel.*

[71] Shortly after its announcement, the New York City Employees Retirement System unsuccessfully challenged the Commission's authority to adopt the position. See *New York City Employee's Retirement System* v. *SEC*, 843 F. Supp. 858, *rev'd* 45 F.3d 7 (2d Cir. 1995). The Amalgamated Clothing and Textiles Union successfully challenged Wal-Mart's decision to exclude an affirmative action proposal after the Division concurred that the proposal could be excluded. See *Amalgamated Clothing and Textile Workers Union* v. *Wal-Mart Stores, Inc.*, 821 F. Supp. 877 (S.D.N.Y. 1993). During the last proxy season, we declined proponents' requests that we review three Division no-action responses implicating the interpretation, and concerning companies' affirmative action policies and practices. Commissioner Wallman dissented, and issued a dissenting statement.

[72] In response to the Questionnaire, 91% of companies favored excluding employment-related shareholder proposals raising significant social policy issues under the *Cracker Barrel* interpretation. Eighty-six percent of shareholders thought such proposals should be included.

[73] See, *e.g., Marion Merrell Dow, Inc.* (Mar. 26, 1993) (proposal on the scope of employees' responsibilities); *Eastman Kodak Company* (Jan. 30, 1991) (procedures for employee-management communications); *International Business Machines Corporation* (Dec. 28, 1995) (proposal requesting amendment of terms of employee benefit plans).

[74] See, *e.g., Allied Signal, Inc.* (Jan. 8, 1997) (proposal on company's Maquiladora operations). In response to the proponents' request for Commission review, we declined to review this no-action response in light of the ongoing Congressionally-mandated study of the shareholder proposal process.

[75] See, *e.g., W.R. Grace & Co.* (Feb. 29, 1996) (proposal on matters such as employee training, quality control).

if the proposals are adopted. The general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors since it is impracticable for shareholders to decide how to solve such problems.[76] Although the policy is based on state law, it is not completely guided by it, due in part to an absence of state authority on many of the issues we are called upon to address.

The policy underlying the rule includes two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on significant social policy issues generally would not be considered to be excludable, because such issues typically fall outside the scope of management's prerogative.[77]

The second consideration relates to the degree to which the proposal seeks to ''micro management'' the company by probing too deeply into ''matters of a complex nature that shareholders, as a group, would not be qualified to make an informed judgment on, due to their lack of business expertise and lack of intimate knowledge of the [company's] business.''[78] This consideration may come into play in a number of circumstances, such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.[79]

E. Rule 14a–8(c)(12): The Resubmission Thresholds

We propose to increase the resubmission thresholds under rule 14a–8(c)(12). If a proposal fails to receive a specified level of support, that rule permits a company to exclude a proposal focusing on substantially the same subject matter for a three-year period. In order to avoid possible exclusion, a proposal must receive at least 3% of the vote on its first submission, 6% on the second, and 10% on the third.

We propose to raise the thresholds to 6% on the first submission, 15% on the second submission, and 30% on the third. At least for the time frame contemplated by the rule, we believe that a proposal that has not achieved these levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval. We propose to increase the second and third thresholds by relatively larger amounts because the proposal will have had two or three years to generate support.

The amendments would also respond to companies' concerns that they receive too many proposals of little or no relevance to their businesses.[80] In addition, we believe that the amendments are appropriate to counter-balance other proposals that would expand the range of proposals companies must include in their proxy materials, such as the proposed reversal of the *Cracker Barrel* position, and the ''override'' mechanism described in Part F below.

The theory of this approach is consistent with that of the proposed ''override'' mechanism: in some circumstances, shareholders may be the best judge of which rule 14a–8 proposals deserve space on the company's proxy card. Even with the proposed revisions, paragraph (c)(12) will continue to permit shareholders an opportunity to see otherwise proper proposals at least once, and to decide for themselves which are sufficiently important and relevant to see on the proxy card a second, third, or fourth time. In this respect, we believe that the proposed approach is preferable to other suggested alternatives, such as increasing the eligibility criteria for initial submissions,[81] or further restricting the types of proposals that may appear in proxy materials. We request your comments whether this approach is preferable to alternatives, such as increasing eligibility criteria.

We request your comments on whether the thresholds should remain at their current levels, or whether they should be amended to amounts lower or higher than those proposed. For instance, instead of increasing the first threshold of 6%, we could increase it to 5%, or to 8% or 10%. The second threshold instead could be increased to 10% or 20%, and the third to 15% or 40%. Alternatively, we could increase only one or two of the thresholds. To illustrate, we could increase only the second and third thresholds, for instance to 15% and 30%, but leave the first at its current level of 3%.

We also request your comments on whether the size of the thresholds should vary in inverse relationship to the size of the company. Under this alternative, the percentage vote that a proposal must receive could be higher or lower depending on the company's total assets, market capitalization, revenues, profits, earnings, or a combination of those factors. A smaller percentage would be sufficient for a larger company, and a larger percentage for a smaller company. This approach would account for the fact that obtaining a certain percentage of support may become more difficult as the size of the shareholder base increases. If you believe that the thresholds should vary, your comments should specify the factors that should be considered in distinguishing between companies.

Finally paragraph (c)(12) prescribes a ''votes cast'' standard for determining whether a proposal received sufficient voting support in previous years to bar its omission in the current year. Under this standard, which has been characterized as the ''most favorable to shareholder proponents,[82] abstentions and broker non-votes[83] are excluded

[76] See Testimony of Chairman Armstrong, Hearings on SEC Enforcement problems Before a Subcommittee of the Senate Committee on Banking and Currency, 85th Cong., 1st Sess., pt. 1, at 118 (1957); see also Exchange Act Rel. No. 12999 (Nov. 22, 1976).

[77] See, *e.g., Reebok Int'l Ltd.* (Mar. 16, 1992).

[78] Exchange Act Release No. 12999 (Nov. 22, 1976).

[79] See, *e.g., Capital Cities/ABC, Inc.* (Apr. 4, 1991) (proposal requested detailed information on the composition of the company's workforce and other matters); *Templeton Dragon Fund/Newgate Management Associates* (Jun. 11, 1997) (proposal sought to establish the interval between repurchases and the amount of the initial repurchase offer for a fund's repurchase program); *Burlington Northern Santa Fe Corp.* (Jan. 22, 1997) (proposal on development of new technology for railroad braking systems); see also, *e.g., Roosevelt* v. *Dupont,* 958 F.2d 416, 427 (D.C. Cir. 1992) (proposal sought to impose earlier timetable for cessation of CFC production).

[80] See Section II above.

[81] For a discussion of the eligibility criteria, see Part I.2. below.

[82] *See* American Bar Association Interpretive Letter (avail. June 24, 1993) (quotation in footnote 2 of incoming letter describing staff's position, for tabulation purposes, on 14a–8(c)(12) resubmission thresholds; the letter sought staff interpretive advice on the proper treatment of broker non-votes and abstentions for purposes of Rule 16b–3).

[83] In Exchange Act Release No. 30849 (June 24, 1992) [57 FR 29564], at footnote 67, the Commission described abstentions and broker-dealer non-votes as follows:

In two instances, a shareholder will be deemed present at the meeting for quorum purposes, but will be deemed not to have voted on a particular matter. First, the shareholder may specifically abstain from the vote by registering an abstention vote. Second, a nominee holding shares for beneficial owners [*e.g.,* a broker-dealer] may have voted on certain matters at the meeting pursuant to discretionary authority or instructions from the beneficial owners, but with respect to other matters may not have received instructions from the

Continued

from the denominator comprised of the total number of votes cast ''For'' and ''Against'' a given proposal. This figure in turn is divided into the total number of favorable votes cast to obtain the requisite percentage.

The Commission believes that the staff should continue to apply this method of vote counting for (c)(12) purposes, regardless of whether the existing thresholds are increased. Comment is sought on whether a different method should be applied; for example, including abstentions and/or broker non-votes as votes cast in the denominator, and/or treating abstentions and/or broker non-votes as votes against a proposal. We note that treating abstentions and/or non-votes as votes cast would result in the largest denominator, requiring the most ''For'' votes to surmount the (c)(12) thresholds.

F. Proposed Override Mechanism

We propose to revise rule 14a–8 to permit a shareholder proponent to override the exclusions under rules 14a–8(c) (5) and (7) if he or she demonstrates that at least 3% of the company's outstanding voting shares support the submission of the proposal for a shareholder vote. Current rule 14a–8 does not include any mechanism for overriding exclusions currently listed in any paragraph of rule 14a–8.

The ''override'' mechanism would broaden the spectrum of proposals that may be included in companies' proxy materials where a certain percentage of the shareholder body believes that all shareholders should have an opportunity to express a view on the proposal. The proposed mechanism would accordingly provide shareholders an opportunity to decide for themselves which proposals are sufficiently important and relevant to all shareholders—and, therefore, to the company—to merit space in the company's proxy materials.

As an example, companies often rely on current paragraph (c)(7) in attempting to exclude shareholder proposals on a variety of issues. Under the proposed ''override,'' a shareholder obtaining the required level of support could avoid exclusion under that paragraph.

The requirement that the proponent obtain the support of a certain percentage of his or her fellow shareholders should serve two purposes. First, the percentage should be high enough to ensure that the proposals receiving that level of support are likely to be sufficiently relevant and important to the company to deserve a space in its proxy materials. Second, the percentage should not be so high as to make the ''override'' unattainable. We believe that 3% would strike the right balance, but we request your comments on whether the percentage should be higher, such as 5% or 8%, or lower, such as 1% or 2%. Your comments, preferably supported by empirical information, should address the degree to which a 3% support level is achievable.

As proposed, the shareholder who submitted the proposal could include his or her own shares in calculating the 3% necessary to accomplish an override. We recognize that, under this approach, a proponent who holds 3% of a company's outstanding voting shares could accomplish an override without having to obtain the endorsement of other shareholders. We request your comments on whether alternatively the rule should preclude consideration of the proponent's own shares in calculating the percentage required for an override.

We request your comments on whether we should adopt an alternative mechanism for establishing a shareholder override in addition to, or in place of, the 3% requirement. We could, for instance, permit an override by a fixed number of shareholders, such as 200, or 500 holders, either in place of the 3% threshold, or as an alternative test. If so, should it be permissible for the supporters to be members of the same organization, such as the same shareholder organization?

We also request your comments on whether the level of support a shareholder must obtain should vary in inverse relationship to the size of the company. That is, the percentage of share ownership that a proposal must receive could be higher or lower depending on the company's total assets, market capitalization, revenues, profits, earnings , income or a combination of those factors. A smaller percentage would be sufficient for a larger company, and a larger percentage for a smaller company. This approach would account for the fact that obtaining a certain percentage of support may become more difficult as the size of the shareholder base increases. If you believe that the thresholds should vary, your comments should specify the factors that should be considered in distinguishing between companies.

One method for obtaining the required support likely could be to enlist the support of institutions holding large blocks of the company's voting shares. We currently do not have conclusive information on the extent to which institutions would actually support inclusion of social proposals, and we request your comments on this question. Our review of institutional filings on form 13F indicates that in many cases the support of 3% could be achieved by enlisting the support of only one institutional holder,[84] although it did not indicate how many of those holders would as a practical matter likely be in a position to engage in shareholder proposal activity.

In calculating the percentage, a proponent could rely on the number of voting shares outstanding reported in the company's annual report to shareholders distributed for the prior year's annual meeting.[85] Proponents taking advantage of the ''override'' would be responsible for demonstrating to the company, not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting, that their proposals had received the endorsement by the holders of 3% of the company's shares entitled to be voted on the proposal at the meeting. That would include, from each supporter:

(i) His or her written statement supporting the inclusion of the proposal in the company's proxy materials for a specific meeting of shareholders. The statement must be executed and dated as of a date no earlier than the date of the company's annual meeting for the prior year. If the company did not hold a meeting the prior year, the statement must be dated no more than one year before the scheduled date of the meeting for which the proposal is submitted. Of course, a shareholder's support of an ''override'' effort would not include proxy authority with respect to the vote on the proposal if it is ultimately placed in the company's proxy materials;[86] and

(ii) A written statement from the record holder of the supporter's shares, specifying the number of shares that the supporter held as of the date of the supporter's statement described in (i) of this section.

It would be the proponent's responsibility to collect this evidence from the supporters and provide it to the company in an organized,

beneficial owner and [therefore] may not exercise discretionary voting power. Such unvoted shares are termed ''non-votes.''

[84] In the last quarter of 1996, institutional investment managers filing Form 13F [17 CFR 249.325] reported holdings in 5,993 listed equity issues. For 69% (4,166) issues, institutional holdings are sufficiently high that an investor would need to contact only one holder to communicate with at least 3% of the corporation's equity ownership.

[85] Companies are required to provide this information in the annual report under rule 5–20 of Regulation S–X. The information should also be available in the company's annual report on Form 10–K [17 CFR 249.310].

[86] See discussion in Part G below of proposed amendments to rules 14a–2 and 13d–5.

understandable form. We request your comments on these procedures, including the requirement that proponents submit the written evidence no later than 120 calendar days before the date that the company first mailed its proxy materials to shareholders for the prior year's annual meeting. Would a deadline set at 60 or 90 calendar days, or 150 or 180 calendar days, be more appropriate?

The 120-day deadline has the benefit of simplicity because it would track the deadline that currently applies to the submission of shareholder proposals to companies, which companies are already required to publish in their proxy materials. The 120-day deadline would also ensure that companies learn of a potential override sufficiently before they print and mail their proxies to review the proponent's written support and to discuss any questions on its sufficiency.

Under current rule 14a–8's timing requirements, there is little change that a proponent would learn whether a company intends to omit, and may properly omit, his or her proposal before invoking the override mechanism. Under paragraph (d) of current rule 14a–8, a company intending to omit a proposal is not required to submit its reasons to the Commission until 80 calendar days before the date the company files its definitive copies of its proxy statement and form of proxy.[87] That, of course, is after the proposed 120-day deadline for submitting ''override'' material to companies. We accordingly propose to amend rule 14a–8's timing requirements to provide a proponent a chance to learn the Division's views on whether the proposal is properly excludable before undertaking an override effort.

Under current rule 14a–8(d), the 80-day deadline applies to companies' submissions with the Commission without regard to when the company receives a copy of the shareholder proposal. Unless the company submits early, the Division's views on the excludability of the proposal may not be available until weeks before the date of the meeting of shareholders. We propose to amend current paragraph (d) to require companies to make their submissions no later than 40 calendar days after receiving a proposal. Thus, under proposed Question 12, a company would be required to submit its reasons to the Commission no later than 40 calendar days after the date that it receives a shareholder proposal for inclusion in its proxy materials, and no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. Under this approach, a proponent who submits his or her proposal to the company early enough would likely learn whether, in the Division's view, the proposal may be excluded before needing to commence an override effort.

We request your comments on whether it is necessary for proponents to learn of the Division's position before undertaking an override effort. We also request your comments on whether the proposed modification of rule 14a–8's timing requirements would provide proponents with an adequate opportunity to learn of the Division's response prior to commencing an override effort. Finally, would the proposed modification provide companies with adequate time to consider shareholder proposals, and to prepare and submit a rule 14a–8 filing with the Commission?[88] Should companies be allowed more time, such as 50 or 60 days, or less time, such as 30 days?

As proposed, written support for an override effort must be executed and dated no earlier than the date of the company's annual meeting for the previous year. The purpose of this requirement is to ensure that support for an override is sought and provided as of a date reasonably close to the date of the meeting at which the proposal is to be presented. It is also designed to prevent a proponent from using the same override more than once. We request your comments on whether proponents should have more time, such as 18 months, to collect override evidence, or less time, such as 9 months. We also request your comments on whether we should consider some other approach, such as stating that override evidence may be used only once, without placing a limitation on how old it can be.

The proposed share ownership requirements for supporting an override would be more lenient than the current eligibility requirements for actually submitting a proposal to a company. Paragraph (a) of current rule 14a–8 requires that the actual proponent have held his or her shares for at least one year before becoming eligible to submit a proposal to a company. One purpose of the one-year requirement is to curtail abuse of the rule by requiring that those who put the company and other shareholders to the expense of including a proposal in its proxy materials have had a continuous investment interest in the company. While we do not propose a one-year ownership requirement for supporting the placement of a proposal in a company's proxy materials under the override mechanism, we request your comments on whether we should adopt one. If so, your comments should address whether we should choose one year, or instead a shorter ownership period for the purposes of the override, such as 6 months, or a longer period, such as 2 years.

In addition, paragraph (a) of the current rule requires that an actual proponent state that he or she intends to hold his or her shares at least through the date of the meeting. Largely out of concern that the fiduciary duties of institutional holders would preclude them from making such a commitment, we do not propose that those supporting an override promise to hold their shares through the date of the meeting. We request your comments, however, on whether we should adopt such a requirement, and on whether it would, if adopted, interfere with fiduciary duties. Alternatively, should we require a supporter to state that he or she intends, as of the date of the statement, to hold his or her shares through the date of the meeting, without attaching a penalty to a sale of the shares before the meeting date?[89]

As proposed, the override mechanism would limit each shareholder to endorsement of no more than one proposal sponsored by another shareholder. That would not, however, affect the shareholder's eligibility to submit a proposal of his or her own. The purpose of the limit would be to place a limitation on the number of proposals that a group of shareholders could force a company to include in its proxy materials. We request your comments on whether the ''one endorsement'' limit should be more liberal, permitting each shareholder to endorse two or three proposals for each company. Or should it be more restrictive, permitting each shareholder to either submit one proposal, or to endorse one proposal, at each company? Under that approach, a shareholder who had endorsed a proposal would be disqualified from submitting his or her own proposal.

We view the proposed override as a supplemental, rather than a primary,

[87] See rule 14a–8(d)[17 CFR 240.14a–8(d)].

[88] Under current rule 14a–8(d), shareholder proposals must be submitted to the company no later than 120 calendar days before the date that the company mailed it proxy materials to shareholders the prior year. Because the company need not make its filing until 80 calendar days before the filing of definitive proxy materials, the current rule in most instances assures companies approximately 40 days to consider and respond to the receipt of a proposal.

[89] Under current rule 14a–8(a)(1), if a proponent fails to hold his or her securities continuously through the date of the meeting, the company may preclude him or her from including another proposal in its proxy materials for two calendar years.

method for including proposals in companies' proxy materials. Accordingly, we are not proposing any special mechanisms for requiring companies to provide shareholder lists or other shareholder information to proponents seeking to obtain support for an override. We request your comments on whether the rule should include any such mechanisms.

G. Safe Harbor Under Section 13(d); Qualified Exemption From Proxy Rules

To address concerns that a proponent's efforts to gather shareholder support to avail himself or herself of the override might be deterred by concerns about triggering filing and other obligations under Section 13(d)[90] or 14(a)[91] of the Exchange Act, we also propose a new safe harbor from the 13(d) ''group'' beneficial ownership reporting requirements, and a new exemption from the proxy rules in rule 14a–2.

Under current rules, there may be a concern that shareholders cooperating in an ''override'' effort, who beneficially own in aggregate more than 5 percent of the company's equity securities, might be required to file a Schedule 13D or 13G if deemed to have formed a ''group'' under rule 13d–5. Similarly, there may be a concern that the shareholder proponents and others assisting them in seeking support also could trigger obligations under the proxy rules if their cooperation involves any ''solicitation'' as defined in rule 14a–1(l)(1).[92] The relief afforded by the safe harbor would be limited to support for the inclusion of the proposal in the company's proxy materials for a shareholder vote. It would not extend to agreements or arrangements on how shareholders would ultimately vote if the proposal appears in the company's proxy materials. Proposed rule 13d–5(b)(3) would provide that:

Notwithstanding paragraph (b)(1) of this section, a group formed among the beneficial owners of a class of equity securities solely by an understanding, arrangement, or agreement that a shareholder proposal should be placed in a registrant's proxy materials for a shareholder vote, for the purpose of using the ''override'' mechanism provided in § 240.14a–8(j) (Question 10), shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group for the purposes of Section 13(d)(1) of the Act (15 U.S.C. 78m); provided, however, that such understanding, arrangement or agreement does not relate to how the holders will vote on the proposal if it is ultimately placed in the registrant's proxy materials.

We request your comments on whether this relief is necessary in order to enable shareholders effectively to make use of the override, and, if so, whether it will serve that purpose adequately. We also request your comments on whether efforts to obtain an override for certain types of proposals (*e.g.*, those affecting control of the company) should be afforded protection under the safe harbor, and more generally on whether the proposed safe harbor is overly broad.

Proposed new rule 14a–2(b)(2) would provide an exemption from compliance with all proxy rules except rule 14a–9,[93] for any solicitation made for the sole purpose of gathering support for placing a shareholder proposal in a registrant's proxy materials pursuant the ''override'' mechanism provided in § 240.14a–8(j) (Question 10); provided that such solicitation does not seek proxy authority with respect to the vote on the proposal if it is ultimately placed in the registrant's proxy materials;

We request your comments on whether we should adopt proposed new rule 14a–2(b)(2), including whether it would provide adequate relief for shareholders concerned that their participation in an ''override'' effort could amount to a ''solicitation,'' or whether the proposed relief is overly broad. We also request your comments on whether, and the extent to which, the restrictions set forth in current rule 14a–2(b)(1) (i)–(x)[94] should also apply to limit the persons who may use the proposed new exemption. Alternatively, we have previously made clear that proponents of rule 14a–8 proposals may use the exemption provided by rule 14a–2(b)(1);[95] instead of adopting the proposed new rule, should we make clear that proponents seeking to use the proposed override mechanism may avail themselves of that exemption?

H. Rule 14a–4: Discretionary Voting Authority

If a shareholder submits a proposal under rule 14a–8 to be included in the company's proxy materials, but the company properly excludes the proposal, rule 14a–4(c)(4)[96] permits the company to exercise discretionary voting authority to vote uninstructed proxies against that proposal if the shareholder chooses an alternative route for its presentation to a vote. The proponent may, for instance, intend to present the proposal from the floor of the company's annual meeting, or solicit proxy votes independently by distributing its own proxy statement and form of proxy.

Rule 14a–4 does not, however, clearly address the exercise of discretionary voting authority if the shareholder chooses not to use rule 14a–8's procedures for placing a proposal in the company's proxy materials. This may occur if the proponent notifies the company of his or her intention to present the proposal from the floor of the meeting, or commences his or her own proxy solicitation, without ever invoking rule 14a–8's procedures.

The availability of discretionary voting authority on a non-14a–8 proposal has been the subject of litigation and attendant uncertainty.[97] Current rule 14a–4(c)(1) permits a company to exercise voting authority on proposals that the company did not know of a ''reasonable time'' before the meeting. The ''reasonable time'' standard has been the source of some uncertainty when a company is notified of a shareholder proposal shortly before its meeting is scheduled to take place.[98]

In response to the Questionnaire, companies indicated that they seek clearer ground rules and the avoidance of potential delay and expense when they are notified of possible proposals after they have begun to print or even mail proxy materials to shareholders.[99] We accordingly propose to amend rule 14a–4(c) in part to clarify when a company may exercise discretionary voting authority on a shareholder proposal where the proponent has not invoked rule 14a–8's procedures.

Last year, the Division provided no-action advice on the ability of a company to exercise discretionary voting authority under rule 14a–4(c)(1) to vote on a matter to be raised at an annual meeting, when the company received adequate advance notice of the proposal.[100] Under those no-action letters, a company that receives adequate advance notice of a non-rule 14a–8 proposal—such as under its advance notice bylaw—nevertheless may preserve its discretionary voting authority by disclosing in its proxy materials the nature of any proposal it has been advised may be presented, and

[90] 15 U.S.C. 78m(d).

[91] 15 U.S.C. 78n(a).

[92] 17 CFR 240.14a–1(l)(1).

[93] 17 CFR 240.14a–9.

[94] 17 CFR 240.14a–2(b)(1).

[95] See Exchange Act Release No. 31326 (Oct. 16, 1992) [57 FR 48276].

[96] 17 CFR 240.14a–4(c)(4).

[97] See, *e.g.*, *United Mine Workers of America* v. *Pittston Company*, Fed. Sec. L. Rep. ¶ 94,946 (D.D.C. Nov. 24, 1989); *Larkin* v. *Baltimore Bancorp*, 769 F. Supp. 919, 925 (D.Md. 1991). See also *Union of Needletrades, Industrial and Textile Employees (''UNITE'') et al.* v. *The May Department Stores Company*, 97 Civ. 3120 (SDNY).

[98] See, *e.g.*, *Larkin* v. *Baltimore Bancorp*, 769 F. Supp. 919, 925 (D.Md. 1991).

[99] See Section II above.

[100] See *Idaho Power Company* (Mar. 13, 1996) and *Borg-Warner Security Corporation* (Mar. 14, 1996).

the manner in which the company intends to exercise its discretion. Under the no-action letters, the company loses its voting discretion, however, once the proponent commences a proxy solicitation and solicits the percentage of holders required to carry the proposal.

Of course, the Division's no-action letters provide only informal advice, and we recognize that the position outlined in those letters has not eliminated all uncertainty in situations where a company has advance knowledge of a potential proxy contest. For instance, if the shareholder proponent files preliminary proxy materials after the company has filed its own proxy statement, or even after the company has mailed its definitive proxy statement and form of proxy to shareholders, the company may be placed in a dilemma of either including the shareholder's proposal on its proxy card, or risking the delay and expense of a last-minute resolicitation. That is because the company may not know whether the shareholder intends to begin to solicit proxies independently by circulating his/her own proxy card, along with the definitive version of his or her proxy statement, or how many shareholders will be solicited if such a solicitation is actually launched.

To address these uncertainties, we propose to amend paragraph (c)(1) of rule 14a–4, and to add new paragraph (c)(2), to provide clearer guidelines in these circumstances. The proposed revisions to paragraph (c)(1) would replace the ''reasonable time'' standard with a clear date after which notice of a possible shareholder solicitation would not be deemed adequate for purposes of proposed new paragraph (c)(2).

Revised paragraph (c)(1) would allow a company voting discretion where ''the registrant did not have notice of the matter more than 45 days before the date on which the registrant first mailed its proxy materials for the prior year's annual meeting.'' [101] This approach will not only provide clearer guidelines for shareholders and companies, but also benefit investors by helping to ensure that companies are notified of proposals sufficiently in advance of the annual meeting to provide shareholders a meaningful opportunity to review related disclosures in the proxy statement.

We recognize that the laws of some states authorize bylaw provisions requiring shareholders to provide advance notice of proposals that they intend to present at a meeting of shareholders. We do not intend to interfere with the operation of state law authorized definitions of advance notice. Accordingly, an advance notice bylaw provision ordinarily would override the 45-day period under rule 14a–4 as proposed to be amended, resulting in either a longer or shorter notice period. For example, if a company properly adopts a bylaw provision requiring advance notice 60 days before the previous year's mailing date, that date would apply instead of the date specified by the proposed paragraph 14a–4(c)(1).

We request your comments on whether it would be more appropriate to establish a shorter period than 45 days, such as 30 days or 15 days, or a longer period, such as 60 or 90 days for revised paragraph 14a–4(c)(1). We understand that some companies begin printing their proxy materials well in advance of the mailing date. We request your comments on whether the 45-day period is adequate to accommodate printing schedules.

Proposed new paragraph 14a–4(c)(2) would address a company's ability to exercise discretionary voting authority after it has received timely notice of a non-14a–8 proposal for the purposes of paragraph (c)(1). The new rule would permit the exercise of such authority if the proxy materials include: (i) In the proxy statement, a discussion of the nature of the matters and how the company intends to exercise its discretion on each matter, and (ii) on the proxy card, a cross-reference to the discussion in the proxy statement and a box allowing shareholders to withhold discretionary authority from management to vote on the same matter(s).

We believe that the proposed framework would benefit both shareholders and companies by establishing clearer and more predictable ground rules. The proposed framework also would provide shareholders with some control over the company's discretionary authority to vote their shares on matters for which the company received adequate notice. Under current rules, a company is not required to provide shareholders an opportunity to withhold discretionary authority on such matters where such authority properly can be exercised.[102] Under proposed new rule 14a–4(c)(2), the company would be required to provide shareholders who execute and return proxies an opportunity to withhold discretionary authority, albeit only on those matters for which it received adequate notice and which it described in its proxy statement. Should we provide shareholders greater latitude to ''grant'' discretionary voting authority, or to ''abstain,'' in addition to the ability to ''withhold''?

We request your comments on the proposed revisions to paragraph (c)(1), and the adoption of proposed new paragraph (c)(2). Would some other approach be more effective? For example, should we require companies to place proposals in their proxy materials if the proponent commences a formal proxy solicitation, and solicits the number of shares necessary to carry the proposal? What impact, if any, might the proposed revision(s) have on the conduct of proxy contests generally? Would the proposed amendments have the effect of unduly discouraging insurgent solicitations? Your comments should address the proposed revisions individually, together with the other proposed changes to rule 14a–4(c), and the broader package of reforms proposed today.

Although they would provide clearer guidance on the exercise of discretionary voting authority under rule 14a–4(c), the proposed amendments would not relieve companies of their obligation under rule 14a–9, the anti-fraud rule. Under that rule, companies must provide shareholders with sufficient information to make informed voting decisions as well as a meaningful opportunity to review the information. If the proponent solicits a large number of his or her fellow shareholders, for instance, a company may elect to provide shareholders with an opportunity to vote for or against a shareholder's proposal. In this and similar circumstances, the company must remain mindful of its obligations under rule 14a–9.[103]

[101] Because the company's mailing date for the previous year's annual meeting may not be available to shareholders, we propose to amend rule 14a–5(e) [17 CFR 240.14a–5(e)] to require companies to publish in their proxy materials the date by which notice would have to be received. This date will by definition be 75 days after the date by which shareholder proposals must normally be received under rule 14a–8 (Question 5). See Part I.4 below.

[102] Rule 14a–4(a)(3) currently provides that ''[n]o reference need be made * * * to proposals as to which discretionary authority is conferred pursuant to [rule 14a–4(c)].''

[103] Recently, for example, some companies have included shareholder proposals in supplemental proxy materials with revised forms of proxy, which they mailed shortly before the date that the annual meeting is scheduled to take place. Even if the supplemental proxy contains all material information necessary to make an informed voting decision, we understand that the beneficial holders may not receive the supplemental materials, or may receive them too late for meaningful review and

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Finally, during the past proxy season, the Division permitted several companies to file proxy materials in definitive form despite prior notification of a non-14a–8 shareholder proposal, so long as they disclosed the nature of the proposal and how they intended to exercise discretionary voting authority if the proposal were to be presented.[104] In light of the proposed amendments to rule 14a–4, we would reverse that informal position, so that companies receiving notice of a non-rule 14a–8 proposal before the filing of their proxy materials would henceforth be required to file their materials in preliminary form, subject to staff review. We request your comments on this proposed reversal.

I. Other Proposed Modifications

We propose a few other modifications to rules 14a–8 and 14a–5:

1. The answer to Question 1 of revised rule 14a–8 would define a ''proposal'' as a request that the company or its board of directors take an action. The definition reflects our belief that a proposal that seeks no specific action, but merely purports to express shareholders' views, is inconsistent with the purposes of rule 14a–8 and may be excluded from companies' proxy materials. The Division, for instance, declined to concur in the exclusion of a ''proposal'' that shareholders express their dissatisfaction with the company's earlier endorsement of a specific legislative initiative.[105] Under the proposed rule, the Division would reach the opposite result, because the proposal did not request that the company take an action. We request your comment on whether this or some other approach may be preferable.

2. Rule 14a–8(a)(1) currently requires that a shareholder have held for one year the lesser of $1,000 in market value, or 1%, of the company's voting shares, at the time he or she submits a proposal. We propose adjusting the $1,000 requirement to account for inflation since first adopted in 1983.[106] The amended rule, which would appear in the answer to Question 2, would require continuous ownership of $2,000 in market value of the company's voting shares. While the actual inflation adjustment from the date of adoption to today would increase the existing requirement by approximately $600, we propose $2,000 to account for future inflation, and because it will be easier to use for calculations. We sought to avoid increasing the threshold further out of concern that a more significant increase could restrict access to companies' proxy materials by smaller shareholders, who equally with other holders have a strong interest in maintaining channels of communication with management and fellow shareholders. We request your comments on whether we should adopt a higher number such as $3,000, $5,000 or $10,000, or a lower number such as $1,500.

We also request your comments on whether we should modify or eliminate the one-year continuous ownership period. One purpose of the requirement is to curtail abuse of the rule by requiring that those who put the company and other shareholders to the expense of including a proposal in proxy materials have had a continuous investment interest in the company. We could, for example, permit shareholders more flexibility to submit proposals earlier, by adopting a shorter period, such as 6 months, or less flexibility, by adopting a longer period, such as 18 months. Alternatively, we could maintain the current one-year period, but provide that relatively larger holders, such as holders of 3% or 6% of the outstanding voting shares, would be eligible to submit proposals without regard to a continuous ownership period.

3. The answer to Question 6 in revised rule 14a–8 would describe the procedures a company must follow if it intends to omit a proposal on grounds that the proponent is ineligible or otherwise failed to comply with the rule's procedures. As proposed, the answer states that a company may omit a proposal on the grounds only after it has first noticed the proponent of the deficiency and gives the proponent 14 calendar days to remedy the deficiency.[107] The proposed language largely adopts the procedures set forth in current paragraph (a)(1)[108] and (a)(4)[109] of the current rule. However, the proposed 14-day period in which a shareholder must respond is shorter than the 21 calendar days allowed by current paragraph (a)(1), and by some of the Division's response letters under paragraph (a)(2).[110] We believe that the shorter period will be sufficient for shareholder proponents, and will help to streamline the rule's operation by establishing a single ''shareholder response period'' that would apply under all circumstances that may arise under the rule. The shorter response time should expedite the timing of a company's filings with the Commission and, in turn, the Commission's responses. We request your comments on whether we should adopt some other mechanism, including whether the proposed time for responding should be shorter, such as 10 calendar days, or longer, such as 21 calendar days.

4. Rule 14a–5(e) currently requires a company to disclose the deadline for submitting proposals to be included in proxy materials for the next year's annual meeting. We propose to revise the rule to require companies also to disclose the date after which proposals submitted outside the framework of rule 14a–8 are considered untimely for the purposes of rule 14a–4(c)(1).[111] This is because shareholders may not be aware of all the information necessary to calculate the date for themselves.

In addition, current paragraph (e) requires companies to notify shareholders of a new meeting date, and deadline for submitting proposals, if the date of the next annual meeting is subsequently advanced by more than 30 days, or delayed by more than 90 days. For the sake of consistency with other rules,[112] we propose to revise the rule to require notification of changes in the meeting date and each of the disclosed dates if the meeting date is delayed or advanced more than 30 calendar days. Finally, the current rule contemplates notification by ''any means calculated to so inform'' shareholders. We propose to require that such notification of date changes appear in the company's earliest quarterly report on Form 10–Q[113] or 10–QSB,[114] if practicable.[115] We request your comments on whether notice in a company's quarterly report is

consideration of whether to change or formulate new voting decisions. Timing considerations often depend on the facts and circumstances of individual cases, and the obligation to provide a meaningful opportunity rests with the company.

[104] Rule 14a–6 [17 CFR 240.14a–6] addresses when a company must file its proxy materials in definitive form, and when it must file in preliminary form.

[105] *Pacific Gas and Electric Company* (Jan. 21, 1997).

[106] See 1983 Release.

[107] Of course, consistent with current practice, a company would not have to follow these procedures if the deficiency cannot be remedied, such as if the proponent fails to submit a proposal by the company's proper deadline.

[108] 17 CFR 240.14a–8(a)(1).

[109] 17 CFR 240.14a–8(a)(4).

[110] 17 CFR 240.14a–8(a)(2). See, *e.g., CoBancorp Inc.* (Feb. 22, 1996); *Archer-Daniels-Midland* (July 29, 1996).

[111] See Part H above.

[112] Current rule 14a–8(a)(3)(i) [17 CFR 240.1a–8(a)(3)(i)], and proposed rule 14a–8 (Question 5), require the company to adjust the deadline for submitting proposals if the date of the annual meeting is delayed or advanced by more than 30 calender days.

[113] 17 CFR 249.308a. The new information, if applicable, would be disclosed under Item 5 of Form 10–Q or 10–QSB (''Other Information'').

[114] 17 CFR 249.308b.

[115] For investment companies, the proposal would require the notification to appear in shareholder reports under 30D–1 [17 CFR 270.30d–1] of the Investment Company Act.

likely to be effective, and whether we should require notification in some document other than the company's quarterly report, such as Form 8–K.[116]

5. Current rule 14a–8(e)[117] provides a mechanism for a shareholder to obtain staff review of a company's statement in opposition to a shareholder proposal appearing in its proxy materials. In our experience, only a handful of shareholders make use of the mechanism each year, and the staff review rarely results in modifications to the company's statement. In most instances, the shareholder's objection highlight matters that do not constitute materially false or misleading statements for the purpose of rule 14a–9. Accordingly, we propose to eliminate the mechanism provided by current rule 14a–8(e). We request your comments on this proposal.

. Current rule 14a–8(a)(2) provides that a proposal may be presented at a meeting either by the proponent or by his or her representative qualified under state law to present the proposal. It has been our long-standing interpretation of this rule that both the proponent and his or her representative must follow any procedures for attending the meeting and/or presenting the proposal that are authorized or required by state law (e.g., possession of a valid proxy). A proponent who holds his or her shares in street name may have to obtain from the record holder (usually a broker or bank) a proxy to permit attendance at the meeting and/or presentation of the proposal. A proponent's representative may have to obtain a proxy from the proponent. A particular state's law, of course, may not authorize or require any such procedures, or the company may elect not to adopt or enforce them where permissible under applicable state law.

We added the following advisory in the answer to Question 8 of the proposed rule: ''Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow any applicable procedures that are proper under state law for appearing at the meeting and/or presenting your proposal.'' We request your comments on this revision, including whether our long-standing interpretation on this subject is appropriate.

IV. Request for Comments

We request your comments on the proposals, other matters that may have an impact on the proposals, and your suggestions for additional changes. In addition to the requests for your comments on each of the specific proposals, we would like to hear your comments on the proposals viewed as a package of reforms, whether they fairly balance participants' sometimes conflicting concerns, and whether they would bring an overall improvement to the process whereby shareholders present proposals to fellow shareholders.

You should consider whether the Commission should instead adopt some fundamentally different approach to the shareholder proposal system. Some alternatives, such as encouraging each company to adopt its own shareholder proposal rule and process, would largely remove the Commission from its role of ''arbiter'' pursuant to the staff's role in issuing response letters. If you believe that we should adopt an alternative approach, your comments should explain the approach in some detail, including the role that the Commission should play.

You may also consider the purposes of the rule, and the degree to which the rule and the proposed amendments serve those purposes. We believe that the purpose of the rule is to ensure proper disclosure and enhance investor confidence in the securities markets by promoting proposals raising significant issues that are relevant to the company and its business. You may want to consider whether this is the proper purpose of the rule, and if so, what types of proposals are the most relevant and important.

We also request comments on the matters discussed in Sections V through VIII below, including our initial regulatory flexibility analysis, our preliminary analysis of costs and benefits and effects on competition, and our obligations under the Paperwork Reduction Act, and the Small Business Regulatory Enforcement Fairness Act of 1996.

If you wish to submit written comments, you should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW,. Washington, D.C. 20549. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–25–97; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying in the Commission's public reference room at the same address. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

V. Initial Regulatory Flexibility Analysis

We have prepared this Initial Regulatory Flexibility Analysis under 5 U.S.C. 603 concerning the proposed amendments to rules 14a–8, 14a–2, 14a–4, 14a–5, and 13d–5. We will consider your written comments in the preparation of a final analysis. The purpose of the amendments is to streamline the operation of the rule, and address concerns raised by both shareholder and corporate participants. We propose the amendments pursuant to Sections 13, 14, and 23 of the Exchange Act[118] and Section 20(a) of the Investment Company Act of 1940[119] (''Investment Company Act'').

The amendments focus primarily on rule 14a–8, which requires companies to include shareholder proposals in their proxy materials, subject to certain bases for excluding them. We propose to revise the rule into a more understandable Question & Answer format; make it easier for shareholders to include a broader range of proposals in companies' proxy materials; and provide companies with clearer guidelines, and more flexibility to exclude economically insignificant proposals and proposals that lack significant shareholder support.

The proposed amendments to rules 14a–2 and 13d–5 are ancillary to the amendments to rule 14a–8. Proposed new 14a–2(b)(2) would provide an exemption from the proxy rules for shareholders attempting to comply with a proposed new ''override'' mechanism in rule 14a–8. The override would permit holders of 3% of the company's voting shares to override the operation of two bases for excluding proposals. Proposed new rule 13d–5 would provide relief for such holders from filing obligations under Section 13(d) of the Exchange Act.

We also propose to amend rule 14a–4 to further clarify when a company may exercise discretionary voting authority on proposals submitted outside the rubric of rule 14a–8.[120] We believe that the revisions would help to mitigate the uncertainty that some companies experience when presented with such proposals. The revisions should also decrease a company's likelihood of incurring the delay and expense of rescheduling its meeting of

[116] 17 CFR 249.308. The information would be included under Item 5 of that form.

[117] 17 CFR 240.14a–8(e).

[118] 15 U.S.C. 78m, 78n & 78u.

[119] 15 U.S.C. 80a–1 *et seq.*

[120] We propose related amendments to rule 14a–5 to require a company to identify in its proxy statement a date relating to its potential exercise of discretionary voting authority.

shareholders, or of resoliciting its shareholders.

The proposed amendments would affect small entities that are required to file proxy materials under the Exchange Act or the Investment Company Act. Exchange Act rule 0–10 defines ''small business'' as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[121] Investment Company Act rule 0–10 defines ''small entity'' as an investment company with net assets of $50 million or less as of that date.[122] We are currently aware of approximately 1,000 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 800 investment companies that satisfy the ''small entity'' definition. Only approximately one-third of all investment companies have shareholder meetings and file proxy materials annually. Therefore, we believe approximately 250 small entity investment companies may be affected by the proposals.

Not all companies conducting a proxy solicitation receive shareholder proposals each year. Furthermore, a company that receives a proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials. In the period from September 30, 1996 to today, we received submissions from a total of 245 companies, and only 6 were ''small businesses.''

Some of the proposed amendments to rule 14a–8 may broaden the range of proposals that companies must include in their proxy materials, requiring companies to include more proposals in their proxy materials than they have in the past. This includes the proposal to reverse the *Cracker Barrel* position on employment-related shareholder proposals raising social policy issues, and the proposal to permit the holders of 3% of the company's voting shares to override the exclusions under paragraphs (5) and (7) under Question 9 of the proposed rule. This year, the Division received approximately 30 submissions, none by ''small business,'' involving employment-related proposals tied to social issues. It is likely, however, that reversal of the *Cracker Barrel* position, if implemented, would lead to an increase in the number of proposals included in proxy materials each year. We request your comments on the potential impact on the number of employment-related proposals submitted to companies each year.

Because rule 14a–8 currently does not include a mechanism like the proposed override, there is no reliable way to predict how often shareholders would in the future take advantage of the override to force companies to include proposals that they would otherwise be permitted to exclude. We request your comments and supporting empirical data on the potential impact of the proposed override on the total number of proposals companies are required to include in their proxy materials.

Other proposed revisions, however, would enhance companies' ability to exclude certain proposals that are economically insignificant to them. As revised, paragraph (5) under proposed Question 9 would permit companies to exclude proposals on matters relating to the lesser of $10 million in total costs or gross revenues (whichever is appropriate), or 3% of total assets or gross revenues (whichever is higher). Because companies' submissions under current rule 14a–8 have not addressed these criteria, we presently have no reliable way to estimate their future impact on the number of proposals companies are required to include in their proxy materials. Unlike the current paragraph (c)(5), however, the proposed revision would enable companies to include companies to exclude proposals based solely on economic criteria, which may permit companies to exclude proposals that they are not permitted to exclude under the current rule. On the other hand, because the proposed economic thresholds are lower than the current thresholds, if the revisions are adopted, companies may be unable to exclude some proposals that they are currently permitted to exclude. We request your comments, preferably supported by empirical data, on the nature and magnitude of the potential impact of this proposed revision.

We expect the proposed increase in the resubmission thresholds under Question 9, paragraph (12), to cause a decrease in the total number of proposals companies must include in their proxy materials each year. Current rule 14a–8(c)(12) permits a company to exclude a proposal focusing on substantially the same subject matter as a prior proposal that failed to receive at least 3% of the vote on its first submission, 6% on the second, and 10% percent on the third. We propose to increase the thresholds to 6%, 15%, and 30%, respectively. However, because companies' submissions under current rule 14a–8 have not addressed these criteria, we presently do not have a reliable way to estimate the future impact on the number of proposals companies are required to include in their proxy materials. We nonetheless expect that the proposed revisions would increase the number of proposals that companies are permitted to exclude; a proposal would have to receive a higher percentage of the votes in order to avoid exclusion if the revisions are adopted. We request your comments, preferably supported by empirical data, on the potential impact of this proposal.

Rule 14a–8(a)(4) permits companies to exclude proposals relating to personal grievances or special interests. We propose to modify our administration of the rule to express ''no view'' if the proposal does not on its face relate to the grievance or interest. We request your comments on the potential impact of this proposal on the number of proposals companies are required to include in their proxy materials each year.

Your comments should address whether the proposals will on balance significantly alter the overall number of proposals companies are required to include in their proxy materials.

We do not have empirical data demonstrating the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, question 14 of the Questionnaire asked each company respondent how much money on average it spends on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the average cost reported by 67 companies was $49,563.[123] We expect that any additional printing costs are lower for small entities, since small entities typically should have to print fewer copies of their proxy materials because they have fewer shareholders. We request your comments, preferably supported by empirical data, on the incremental cost that ''small businesses'' would incur if required to include additional proposals in their proxy materials.

None of the proposed amendments should increase the time or burden of preparing individual submissions under rule 14a–8. Our proposal to reformat the rule into a more understandable Question & Answer format should help decrease the time and expense incurred by both shareholders and companies

[121] 17 CFR 240.0–10.

[122] 17 CFR 240.0–10.

[123] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $200 to a high of nearly $900,000. The median cost was $10,000.

attempting to comply with its provisions. Companies frequently consult with legal counsel in preparing submissions under rule 14a–8. The rule's added clarity may obviate the need for a shareholder or company to consult with counsel, depending on the issues raised by the submission. Under some circumstances, however, companies' submissions must include supporting opinions of counsel.

In addition, because a company that includes a proposal is not required to make a submission under rule 14a–8, any costs of including an additional proposal should be offset, at least partially, by not having to make a rule 14a–8 submission. Under rule 14a–8, a company is not required to make a submission to the Commission unless it intends to exclude the proposal from its proxy materials. Therefore, a company would save any costs associated with the submission if it decides to include the proposal.

We do not have empirical data demonstrating how much it costs companies to consider and prepare an individual submission under rule 14a–8. We do not believe, however, that the cost is likely to vary depending on the size of the company. That is, the cost to a small entity is likely to be the same as the cost to a larger entity. Question 13 of the Questionnaire asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that it wishes to exclude (including internal costs as well as any outside legal and other fees). While responses may have accounted for consideration of more than one proposal, the costs reported by 80 companies averaged $36,603.[124]

The proposed amendments to rule 14a–4 should favorably affect companies, including ''small business,'' because they would provide clearer ground rules when a shareholder presents a proposal without invoking rule 14a–8. We do not have empirical information on the number of ''small businesses'' that receive non-rule 14a–8 proposals each year, since non-14a–8 proposals do not necessarily lead to a submission to the Commission. We therefore request your comments on the number of ''small businesses'' that may be affected by the proposed amendments to rule 14a–4.

To the extent they receive such proposals, we believe that the proposed amendments to rule 14a–4 would favorably affect ''small businesses'' by reducing uncertainly, and decreasing the likelihood that the company would have to incur the delay and expense of rescheduling its annual meeting, or resoliciting its shareholders. We request your comments and empirical data, however, on any costs or other burdens that these amendments may impose on small entities.

Under the proposed revisions to rule 14a–4, a company wishing to preserve discretionary voting authority on certain possible proposals may be required to include in its proxy materials an additional discussion among other things describing the proposals. It may also be required to include an additional box on its proxy card permitting shareholders to withhold discretionary voting authority on the proposals if they are raised. We request your comments and empirical data on any incremental costs resulting from these proposed requirements. Automatic Data Processing, Inc. informed the staff that tabulation of an additional box on the proxy card permitting shareholders to withhold discretionary authority would likely cause no increase in the cost of its tabulation services. Daniels Financial Printing informed the staff that in most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company. That is because up to an extra three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. Daniels Financial estimated that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company.

As discussed in section III.I of this release, the proposed amendment to rule 14a–5 would require companies to disclose an additional date in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible, additional printing costs. Because it is exemptive, the proposed amendment to rule 14a–2 should help shareholders attempting to use the proposed override mechanism to avoid the expense of preparing proxy materials, and should impose no additional costs. Similarly, because it would provide a safe harbor, the proposed amendments to rule 13d–5 should impose no additional costs on shareholders, which may include small entities.

Finally, current rule 14a–8(e) provides a mechanism for a proponent to challenge a company's statement in opposition to a proposal if the proponent believes that the statement contains materially false or misleading statements in violation of rule 14a–9. The elimination of the rule will likely save companies, including small entities, the expense of responding to challenge under the rule. This proposal is discussed more fully in section III.I. We request your comments on these views.

We considered significant alternatives to the proposed amendments for small entities with a class of securities registered under the Exchange Act. We could, for instance, exempt small businesses from any obligation to include shareholder proposals in their proxy materials. Such an exemption, however, would be inconsistent with the current purpose of the proxy rules, which is to provide and regulate a channel of communication among shareholders and public companies. Exempting small entities would deprive their shareholders of this channel of communication.

We also considered other alternatives identified in Section 603 of the Regulatory Flexibility Act to minimize the economic impact of the amendments on small entities. We considered the establishment of different compliance requirements or timetables that take into account the resources available to small entities. Different timetables, however, may make it difficult for the Division to issue responses in a timely manner, and could otherwise impede the efficient operation of the rule.

We also considered the clarification, consolidation, or simplification of the rule's compliance requirements for small entities. As explained more fully in section III.A. of this release, we propose to recast and reformat rule 14a-8 into a more understandable, Question & Answer format. As described above, some of the proposed amendments should enable companies, including small businesses, to exclude certain additional proposals from their proxy materials. As explained in section III.H., we also propose clearer guidelines for companies' exercise of discretionary voting authority under rule 14a–4. If adopted, these modifications should simplify and facilitate compliance by all companies, including small entities. We do not currently believe that there is any appropriate way to further facilitate compliance by small entities without compromising the current purposes of the proxy rules.

We also considered the use of performance rather than design standards. The rules that we propose to modify are not specifically designed to achieve certain levels of performance.

[124] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $10 to a high of approximately $1,200,000. The median cost was $10,000.

Rather, they are designed to serve other policies, such as to ensure adequate disclosure of material information, and to provide a mechanism for shareholders to present important and relevant matters for a vote by fellow shareholders. Performance standards accordingly would not directly serve the policies underlying the rules. We do not believe that any current federal rules duplicate, overlap, or conflict with the rules that we propose to amend.

We request your written comments on any aspect of this Initial Regulatory Flexibility Analysis. We particularly seek comment on: (i) The number of small entities that would be affected by the proposed amendments; (ii) the expected impact of, the proposals as discussed above; and (iii) how to quantify the number of small entities that would be affected by, and how to quantify the impact of, the proposed amendments. We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VI. Cost-Benefit Analysis

The proposed rule changes should improve the efficiency of the process for determining which shareholder proposals must be included in proxy materials distributed by companies. They should help to ensure that a company includes shareholder proposals that are relevant to the company and likely to receive the support of a significant percentage of the company's shareholders. The proposed rule changes would also provide clearer guidelines for a company's exercise of discretionary voting authority when notified that a shareholder intends to present a proposal without invoking rule 14a–8's mechanisms.

We currently do not believe that the proposed changes would adversely affect capital formation, market efficiency, competition, or investors' confidence in the integrity of the securities markets. Rule 14a–8 requires companies to include shareholder proposals in their proxy materials, subject to specific bases for excluding them. We believe that the rule enhances investor confidence in the securities markets by providing a means for shareholders to communicate with management and among themselves on significant matters. By expanding the range of proposals that companies must include in their proxy materials, the proposed amendments to rule 14a–8 could make a company's managers more responsible to the shareholders. That, in turn, could better align the interests of the company's management with that of shareholders, possibly resulting in an improvement in the company's operations and the market price for its shares. Shareholder proposals could have a positive or negative impact, or no impact, on the price of a company's securities.[125] We are currently examining this issue, and we invite comment on the expected shareholder wealth impact of the rule.

At the same time, other amendments would improve the integrity and efficiency of the shareholder proposal process by increasing companies' ability to exclude economically insignificant proposals, or proposals lacking significant shareholder support.

We currently do not know whether the proposed amendments would on balance significantly affect the cost of complying with the rules. Not all companies receive shareholder proposals each year. And a company that receives a proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials. In the period from September 30, 1996 to today, we received approximately 400 submissions under rule 14a–8.

Some of the proposed amendments to rule 14a-8 may broaden the range of proposals that companies must include in their proxy materials, requiring companies to include more proposals than they have in the past. This includes the proposal to reverse the *Cracker Barrel* position on employment-related shareholder proposals raising social policy issues, and the proposal to permit holders of 3 percent of the company's shares to override the exclusions under paragraphs (5) and (7) under proposed Question 9.

This year, the Division received approximately 30 submissions of proposals implicating the *Cracker Barrel* position on employment-related proposals tied to social issues. Reversal of that position could encourage more shareholders to submit these types of proposals to companies each year, and we do not know whether the modification would result in a significant increase in the number of such proposals. We request your comments, including any supporting empirical information on this question.

Because rule 14a–8 currently does not include a mechanism like the proposed ''override,'' we presently have no reliable means to predict how often shareholders would in the future take advantage of the override to force companies to include proposals that they would otherwise be permitted to exclude. During the last proxy season, the staff concurred in the exclusion of almost 100 proposals under two grounds for omitting proposal that would be subject to the proposed override (rules 14a–8 (c)(7) and (c)(5)). We request your comments and supporting empirical data on the potential impact of the override on the total number of proposals companies are required to include in their proxy materials.

Other proposed revisions, however, would enhance companies' ability to exclude economically insignificant proposals. As revised, paragraphs (5) under proposed Question 9 would permit companies to exclude proposals on matter relating to the lesser of $10 million in total costs or gross revenues, or 3 percent of total assets or gross revenues (whichever is higher). Because companies' submissions under current rule 14a–8 have not addressed these criteria, we presently have no reliable means to estimate their future impact on the number of proposals companies are required to include in their proxy materials. Unlike current rule 14a–8(c)(5), however, the proposed revision would enable companies to exclude proposals based solely on economic criteria, which may permit companies to exclude proposals that they are not permitted to exclude under the current rule. On the other hand, because the proposed economic thresholds are significantly lower than the current thresholds, if the revisions are adopted companies may be unable to exclude some proposals that they are currently permitted to exclude. We request your comments, preferably supported by empirical data, on the nature and magnitude of the potential impact of these proposed revisions.

We expect the proposed modifications to paragraph (12) under proposed Question 9 to cause a decrease in the total number of proposals companies must include in their proxy materials each year. Current rule 14a–8(c)(12) permits a company to exclude a proposal focusing on substantially the same subject matter as a prior proposal that failed to receive at least 3 percent of the vote on its first submission, 6 percent on the second, and 10 percent on the third. We propose to increase the thresholds to 6 percent, 15 percent, and 30 percent respectively. Because companies' submissions under current rule 14a–8 have not addressed these criteria, there is no reliable way to estimate their future impact on the number of proposals companies would

[125] See, *e.g.*, Michael P. Smith, Shareholder Activism by Institutional Investors: Evidence from CalPERS, The Journal of Finance, Vol. L1, No. 1, March 1996; Sunil Wahal, Pension Fund Activism and Firm Performance, Journal of Financial and Quantitative Analysis, Vol. 31, No. 1, March 1966.

be required to include in their proxy materials. Nevertheless, we expect that the revisions will increase the number of proposals that companies are permitted to exclude. We request your comments, preferably supported by empirical data, on the potential impact of this proposal.

Rule 14a–8(c)(4) permits companies to exclude proposals relating to personal grievances or special interests. We propose to modify our administration of the rule to express ''no view'' if the proposal does not on its face relate to the grievance or interest. We request your comments on the potential impact of this proposal on the number of proposals companies are required to include in their proxy materials each year.

We do not know whether the proposed revisions to rule 14a–8 would significantly alter the overall number of proposals companies are required to include each year. We request your comments, preferably supported by empirical information, on whether the proposed amendments, considered together, would in practice cause a significant overall increase or decrease in the number of proposals companies must include in their proxy materials each year.

We do not have empirical data demonstrating the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, question 14 of the Questionnaire asked each company respondent how much money on average it spends on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the average cost reported by 67 companies was $49,563.[126] We seek comment on whether this estimated cost is accurate; if not accurate, we ask commenters to submit more accurate cost data.

In addition, because a company that includes a proposal is not required to make a submission to the Commission under rule 14a–8, any incremental costs of including an additional proposal should be offset by savings on the submission. We do not know the extent to which any additional incremental costs would be offset by savings, and we therefore request your comments and empirical data on additional incremental savings, and the degree to which they would offset additional costs. Question 13 of the Questionnaire asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that it wishes to exclude (including internal costs as well as any outside legal and other fees). While individual responses may have accounted for consideration of more than one proposal, the costs reported by 80 companies averaged $36,603.[127] We seek comment on whether this estimated cost is accurate; if not accurate, we ask commenters to submit more accurate cost data.

The proposed amendments to rule 14a–4 would provide clearer ground rules for companies' exercise of discretionary voting authority when a company receives a shareholder proposal outside the rubric of rule 14a–8. We believe that these amendments would therefore eliminate much of the uncertainty that some companies experience in these circumstances, and decrease the likelihood a company will have to incur the delay and expense to resolicit its shareholders, or to reschedule its meeting of shareholders. We request your comments and empirical information on the potential effects of these proposed revisions to rule 14a–4.

Under the proposed revisions to rule 14a–4, a company wishing to preserve discretionary voting authority on certain possible proposals my be required to include in its proxy materials an additional discussion that, among other things, describes the proposals. It may also be required to include an additional box on its proxy card permitting shareholders to withhold discretionary voting authority on the proposals if they are raised. We request your comments and empirical data on any incremental cost resulting from these proposed requirements. Automatic Data Processing, Inc. informed the staff that tabulation of an additional box on the proxy card permitting shareholders to withhold discretionary authority would likely cause no increase in the cost of its tabulation services. Daniels Financial Printing informed the staff that in most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company. That is because up to an extra three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. Daniels reported that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company. We seek comment on whether these estimated costs are accurate, and on the degree to which such costs may vary based on timing considerations, such as the proximity to the company's planned mailing date. If you believe that they are not accurate, we ask you to submit cost data.

The proposed amendments to rules 14a–2 and 13d–5 are ancillary to the amendments to rule 14a–8. Proposed rule 14a–2(b)(2) would provide an exemption from the proxy rules for shareholders attempting to comply with the proposed new ''override'' mechanism in rule 14a–8. The override would permit the holders of 3% of the company's voting shares to override the operation of two bases for excluding proposals. Proposed rule 13d–5 would provide relief for such shareholders for the purposes of Section 13(d). Because these amendments would be exemptive, we do not expect that they would be responsible for any additional costs or other burdens. We nonetheless request your comments on the accuracy of these views.

As discussed in section III.I., the proposed amendment to rule 14a–5 would require companies to disclose an additional date in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible, additional printing costs. We nonetheless request your comments on the accuracy of this view.

Finally, current rule 14a–8(e) provides a mechanism for a proponent to challenge the Division's statement in opposition to a proposal if the proponent believes that the statement contains materially false or misleading statements in violation of rule 14a–9. The elimination of the rule will likely save companies, including small entities, the expense of responding to challenges under the rule. This proposal is discussed more fully in section III.I. We request your comments on these views.

VII. Paperwork Reduction Act

Certain provisions of rules 14a–8, 14a–4, and 14a–5 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted proposed revisions to those rules to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are ''Amendments to Shareholder Proposal Rules.''

[126] See note 123 above.

[127] See note 124 above.

Schedule 14A,[128] and the Commission's related proxy rules, including rules 14a–8, 14a–4, and 14a–5, were adopted pursuant to Section 14(a) of the Exchange Act. Section 14(a) directs the Commission to adopt rules ''as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this rule title.'' Schedule 14A prescribes information that a company must include in its proxy statement to ensure that shareholders are provided material information relating to voting decisions.

The Commission currently estimates that Schedule 14A results in a total annual compliance burden of 782,964 hours.[129] The burden was calculated by multiplying the estimated number of entities filing Schedule 14A annually (approximately 9,321) by the estimated average number of hours each entity spends completing the form (approximately 84 hours). The Commission staff estimated the number of entities that would complete and file the form based on the actual number of filers during the Commission's most recently completed fiscal year. The staff estimated the average number of hours each entity spends completing the form by contacting a number of law firms and other persons regularly involved in completing the form.

The amendments to rules 14a–8, 14a–4(c), and 14a–5, if adopted, would make it easier for shareholder proponents to submit a broader range of proposals, and provide companies subject to the proxy rules with clearer grounds and more flexibility to exclude proposals that fail to attract significant shareholder support, or that are economically insignificant. As a result, the Commission anticipates any additional burden to be offset by a corresponding reduction in the number of hours respondents need to comply with Schedule 14A.

The amendments focus primarily on rule 14a–8, which requires companies to include shareholder proposals in their proxy materials, subject to certain bases for excluding them. Not all companies receive shareholder proposals each year. Furthermore, a company that receives a shareholder proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials. In the period from September 30, 1996 to today, we received submissions from a total of 245 companies, concerning approximately 400 proposals.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) 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; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden to collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–25–97. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996[130] (''SBREFA''), we also are requesting information on the potential impact of the proposed amendments on the economy on an annual basis. You should provide empirical data to support your views. Under SBREFA, the proposals must be submitted to Congress before they take effect. If they amount to a ''major rule,'' then effectiveness of the rules will be delayed 60 days pending Congressional review. We have not yet reached a conclusion on whether the proposals amount to a ''major rule,'' and we request your comments, supported by empirical data, on that issue.

A rule is ''major'' if it has resulted, or is likely to result in (i) an annual effect on the economy of $100 million or more; (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effects on competition, investment, or innovation.

We presently do not believe that there is a basis for concluding that the proposals will result in a major increase in costs or prices for consumers or individual industries. The proposals, which relate to the disclosures in public companies' proxy statements, and their exercise of discretionary voting authority, are not designed to, and should not, have any impact on consumer prices. As noted in the Cost-Benefit Analysis in section VI above, the costs associated with including shareholder proposals in companies' proxy materials averages less than $50,000.[131] The costs associated with excluding a proposal under rule 14a–8 averages less than $37,000.[132]

Similarly, we presently do not believe the proposals will have any adverse effects on competition, investment, or innovation. The proposals should improve the efficiency and effectiveness of a channel of communication between companies and shareholders.

We have not yet reached a conclusion on whether the proposals will have an annual effect on the economy of $100 million or more, and we request your comments, supported by empirical data, on the proposals' potential overall annual effect.

Some of the proposed amendment to rule 14a–8 may broaden the range of proposals that companies must include in their proxy materials, requiring companies to include more proposals than they have in the past. This includes our proposal to reverse the *Cracker Barrel* position on employment-related shareholder proposals raising social policy issues, and our proposal to permit holders of 3% of a company's voting shares to override the exclusions under paragraphs (5) and (7) under proposed Question 9.

This year, the Division received approximately 30 submissions on proposals implicating the *Cracker Barrel* position on employment-related proposals tied to social issues. Reversal of that position could encourage more shareholders to submit these types of proposals to companies each year. We request your comments, preferably supported by empirical data, on the

[128] 17 CFR 240.14a–101.

[129] This reflects an increase from previous estimates of total compliance burden. The increase results solely from an increase in the number of entities filing on Schedule 14A each year. The increase is not attributable to any of the proposals described in this release.

[130] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[131] See note 123 above.

[132] See note 124 above.

potential impact on the number of employment-related proposals submitted to companies each year, and any related costs resulting from this proposal.

Because rule 14a–8 currently does not include an ''override'' mechanism, we have no reliable means to predict how often shareholders would in the future take advantage of the mechanism to force companies to include proposals that they would otherwise be permitted to exclude. We request your comments and supporting empirical data on the potential impact of the proposed override on the number of proposals companies are required to include in their proxy materials. Although in many cases garnering sufficient support for the override may require substantial efforts, we expect that shareholders will successfully use the override several times each year.

Other proposed revisions, however, would enhance companies' ability to exclude economically insignificant proposals. As revised, paragraph (5) under proposed Question 9 would permit companies to exclude proposals on matters relating to the lesser of $10 million in total costs or gross revenues, or 3% of total assets or gross revenues (whichever is higher). Because companies' submissions under current rule 14a–8 have not addressed these criteria, we have no reliable means to estimate the future impact of these proposed amendments on the number of proposals companies are required to include in their proxy materials. Unlike the current rule 14a–8(c)(5), however, companies would be permitted to exclude proposals based solely on economic criteria, which may permit companies to exclude proposals that they are not permitted to exclude under the current rule. On the other hand, because the proposed economic thresholds are lower than the current thresholds, if the revisions are adopted, companies may be unable to exclude some proposals that they are currently permitted to exclude. We request your comments, preferably supported by empirical data, on the nature and magnitude of the potential impact of this proposed revision.

We expect the proposed modifications to paragraph (12) under proposed Question 9 to cause a decrease in the total number of proposals companies must include in their proxy materials each year. Current rule 14a–8(c)(12) permits a company to exclude a proposal focusing on substantially the same subject matter as a prior proposal that failed to receive at least 3% of the vote on its first submission, 6% on the second, and 10% percent on the third. We propose to increase the thresholds to 6%, 15%, and 30%, respectively. Because companies' submissions under current rule 14a–8 do not address these proposed increased thresholds, there is no reliable way to estimate their future impact on the number of proposals companies are required to include in their proxy materials. Nonetheless, we expect that the revisions will increase the number of proposals that companies are permitted to exclude. We request your comments, preferably supported by empirical data, on the potential impact of this proposal.

Rule 14a–8(c)(4) permits companies to exclude proposals relating to personal grievances or special interests. We propose to modify our administration of the rule to express ''no view'' if the proposal does not on its face relate to the grievance or interest. We request your comments on the potential impact of this proposal on the number of proposals companies are required to include in their proxy materials each year.

We do not know whether the proposed revisions to rule 14a–8 would on balance significantly alter the overall number of proposals companies are required to include in their proxy materials. We request your comments and empirical data on this question. We do not presently have empirical data demonstrating the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, question 14 of the Questionnaire asked each company respondent how much money on average it spends on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the cost reported by 67 companies averaged $49.563.[133]

In addition, because a company that includes a proposal is not required to make a submission to the Commission under rule 14a–8, any incremental costs of including an additional proposal should be offset by savings on the submission. We do not know the extent to which any additional incremental costs would be offset by savings, and we therefore request your comments and empirical data on additional incremental savings, and the degree to which they would offset additional costs. Question 13 of the Questionnaire asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that it wishes to exclude (including internal costs as well as any outside legal and other fees). While individual responses may have accounted for consideration of more than one proposal, the costs reported by 80 companies averaged $36,603.[134]

Revised rule 14a–4(c) would provide companies with clearer guidelines for the exercise of discretionary voting authority on proposals presented by shareholders who do not invoke rule 14a–8's procedures. We do not know how many companies subject to our proxy rules receive such proposals each year, and request your comments and supporting empirical data on that question.

We believe the revisions, if adopted, will help some companies avoid costs associated with rescheduling their annual meetings, and possibly with resolicitations of proxy materials. We do not have empirical data to estimate reliably the scope or magnitude of any such savings, and we request your comments, preferably supported by empirical data, on this question.

Under the proposed revisions to rule 14a–4, a company wishing to preserve discretionary voting authority on certain possible proposals may be required to include in its proxy materials an additional discussion among other things describing the proposals. It may also be required to include an additional box on its proxy care permitting shareholders to withhold discretionary voting authority on the proposals if they are raised. We request your comments and empirical data on any incremental cost resulting from these proposed requirements. Automatic Data Processing, Inc. informed the staff that tabulation of an additional box on the proxy card permitting shareholders to withhold discretionary authority would likely cause no increase in the cost of its services. Daniels Financial Printing informed the staff that in most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company. That is because up to an extra three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. Daniels Financial reported that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company.

As discussed in section III.I., the proposed amendment to rule 14a–5 would require companies to disclose an

[133] See note 123 above.

[134] See note 124 above.

additional date in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible,, additional printing costs. Because it is exemptive, the proposed amendment to rule 14a–2 should help some shareholders attempting to use the proposed override mechanism to avoid the expense of preparing proxy materials, and should impose no additional costs. Similarly, because it would provide a safe harbor, the proposed amendments to rule 13d–5 should impose no additional costs. We request your comments on these views.

Finally, current rule 14a–8(e) provides a mechanism for a proponent to challenge a company's statement in opposition to a proposal if the proponent believes that the statement contains materially false or misleading statements in violation of rule 14a–9. The elimination of the rule will likely save companies, including small entities, the expense of responding to challenges under the rule. This proposal is discussed more fully in section III.I. We request your comments on these views.

We also believe that certain shareholder proposals may have a positive or negative effect, or no effect, on shareholder wealth.[135] By expanding the range of proposals that companies must include in their proxy materials, the amendments could make a company's managers more responsive to the shareholders. That, in turn, could better align the interests of the company's management with that of shareholders, possibly resulting in an improvement in the company's operations and the market price for its shares. We currently lack reliable empirical data on the magnitude and frequency of any such effects. We request your comments supported by empirical data on the magnitude and frequency of any such effects. We request your comments supported by empirical data.

Relatively few shareholder proposals are approved by shareholders each year. Based on information provided to us by IRRC,[136] we understand that in the period from January 1, 1997 to date, 19 proposals obtained shareholder approval out of a total of 234 submitted to shareholder votes. Nine were proposals to repeal classified boards. Nine sought redemption of companies' shareholder rights plans. One focused on ''golden parachute'' payments to executives. Even if a proposal does not obtain shareholder approval, however, it may nonetheless influence management, especially if it receives substantial shareholder support. A proposal may also influence management even if it is not put to a shareholder vote. We understand that in some instances management has made concessions to shareholders in return for the withdrawal of a proposal.

Proposals addressing corporate governance matters tend to receive the most substantial shareholder support, and, we believe, are most likely to affect shareholder wealth. Examples are proposals on voting and nomination procedures for board members, and proposals to restrict or eliminate companies' shareholder rights plans. The proposed revisions do not focus on those types of proposals, and should not significantly affect shareholders' ability to include them in companies' proxy materials. As a result, we request your comments on the degree to which the proposals would impact shareholder wealth, viewing the proposals in isolation and together with other proposals.

The proposed modification to current rule 14a–8(c)(12) will affect all proposals, including corporate governance proposals. Those modifications will make it easier for a company to exclude a proposal that has failed to receive significant shareholder support in the recent past. Because we believe that the revised rule, if adopted, would operate to exclude only those proposals on which shareholders have already voted at least once previously, and have effectively rejected, we do not expect that the revisions to current rule 14a–8(c)(12) will have any significant impact on shareholder wealth. We request your comments, preferably supported by empirical data, on the accuracy of these views.

IX. Statutory Basis and Text of Amendments

We propose amendments to Rules 14a–8, 14a–4, 14a–2, 14a–5, and 13d–5 under the authority set forth in Sections 13, 14 and 23 of the Securities Exchange Act of 1934, and Section 20(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. By adding paragraph (b)(3) to § 240.13d–5 to read as follows:

§ 240.13d–5 Acquisition of securities.

* * * * *

(b) * * *

(3) Notwithstanding paragraph (b)(1) of this section, a group formed among the beneficial owners of a class of equity securities solely by an understanding, arrangement, or agreement that a shareholder proposal should be placed in a registrant's proxy materials for a shareholder vote, for the purpose of using the ''override'' mechanism provided in § 240.14a–8(j) (Question 10), shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group for the purposes of Section 13(d)(1) of the Act (15 U.S.C. 78m); provided, however, that such understanding, arrangement or agreement does not relate to how the holders will vote on the proposal if it is ultimately placed in the registrant's proxy materials.

3. By amending § 240.14a–2 by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5), and by adding a new paragraph (b)(2), to read as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(2) For any solicitation made for the sole purpose of gathering support for placing a shareholder proposal in a registrant's proxy materials pursuant the ''override'' mechanism provided in § 240.14a–8(j) (Question 10); provided that such solicitation does not seek proxy authority with respect to the vote on the proposal if it is ultimately placed in the registrant's proxy materials;

* * * * *

4. By amending § 240.14a–4 by removing the last sentence in paragraph (a)(3) before the note, by revising the introductory text of paragraph (c) and paragraph (c)(1), redesignating paragraphs (c)(2) through (c)(5) as paragraphs (c)(3) through (c)(6), and

[135] See note 125 above.

[136] See note 13 above.

adding a new paragraph (c)(2), to read as follows:

§ 240.14a–4 Requirements as to proxy.

* * * * *

(c) A proxy may confer discretionary authority to vote on any matter presented by a security holder for a vote under the following circumstances:

(1) If the registrant did not have notice of the matter at least 45 days (or such date specified by an advance notice bylaw) before the date on which the registrant first mailed its proxy materials for the prior year's annual meeting of shareholders. If the registrant did not hold an annual meeting of shareholders the prior year, or if the date of the annual meeting has changed more than 30 days from the prior year, then notice must be received a reasonable time before the company mails its proxy materials for the current year.

(2) If the registrant includes, in the proxy statement, a discussion of the nature of any such matter and how the registrant intends to exercise its discretion on each matter, and, in the proxy card, a cross-reference to the discussion in the proxy statement and a box to withhold discretionary authority on the same matter(s).

5. By amending § 240.14a–5 by revising paragraph (e), and adding paragraph (f), to read as follows:

§ 240.14a–5 Presentation of information in proxy statement.

* * * * *

(e) All proxy statements shall disclose, under an appropriate caption, the following dates:

(1) The deadline for submitting shareholder proposals for inclusion in the registrant's proxy statement and form of proxy for the registrant's next annual meeting, calculated in the manner provided in § 240.14a–8(d) (Question 4); and

(2) The date after which notice of a shareholder proposal submitted outside the rubric of § 240.14a–8 is considered untimely, calculated in the manner provided by § 240.14a–4(c)(1).

(f) If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform security holders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice in its earliest possible quarterly report on Form 10–Q (§ 249.308a of this chapter) or Form 10–QSB (§ 249.308b of this chapter), or, in the case of investment companies, in a shareholder report under § 270.30d–1 of this chapter under the Investment Company Act of 1940, or, if impracticable, any means reasonably calculated to inform shareholders.

6. By revising § 240.14a–8 to read as follows:

§ 240.14a–8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy materials when it holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured the section in a question-and-answer format so that it is easier to understand. The references to ''you'' are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, shareholders will have an opportunity to case their votes either in support of your proposal or against your proposal. Unless otherwise indicated, the word ''proposal'' as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You will have to continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records, the company can verify your eligibility on its own. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the ''record'' holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3: How many proposals may I submit?* Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4: How long can my proposal be?* The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5: What is the deadline for submitting a proposal?* (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than thirty days from last year's meeting, you can find the deadline on one of the company's quarterly reports on Form 10–Q (§ 249.308a of this chapter) or 10–QSB (§ 249.308b of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid confusion, shareholders should submit their proposals by means, including

electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and mail its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and mail its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may omit your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked no later than 14 days from the date you received the company's notification.

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude any of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be omitted?* Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to omit a proposal.

(h) *Question 8: Must I appear personally at the shareholders meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow any applicable procedures that are proper under state law for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part on the Internet, and the company permits you or your representative to present your proposal via the Internet, then you may appear through the Internet rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company may omit any of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to omit my proposal?*

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the state of the company's incorporation;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if written so that they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a–9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company, or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which benefit or interest is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to a matter involving the purchase or sale of services or products which represents $10 million or less in gross revenues or total costs, whichever is appropriate, for the company's most recently completed fiscal year. However, if 3% of the company's gross revenue or total assets, whichever is higher, for the company's most recently completed fiscal year, results in a number less than $10 million, that number applies instead of $10 million;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal relates to specific business decisions normally left to the discretion of management;

Note to paragraph (i)(7): Examples of such matters include the way a newspaper formats its stock tables, whether a company charges an annual fee for use of its credit card, the wages a company pays its non-executive employees, and the way a company operates its dividend reinvestment plan. For an investment company, such matters include the decision whether to invest in the securities of a specific company.

(8) *Relates to election:* If the proposal relates to an election for membership on the company's board of directors;

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may omit it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 6% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 15% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 30% of the vote on its last submission to shareholders if proposed three times or more previously

within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposed relates to specific amounts of cash or stock dividends.

(j) *Question 10: If the company demonstrates that my proposal is excludable based on the criteria listed in the answer to Question 9, is there any other way to have my proposal included in the company's proxy materials?* (1) Yes. If enough of the company's shareholders support inclusion of your proposal in the company's proxy materials, then you may override certain of the criteria for excluding your proposal listed in answer to Question 9. More specifically, if you demonstrate to the company that the holders of 3% of the company's outstanding shares entitled to be voted on the proposal at the meeting agree that your proposal should be included in the company's proxy materials, then the company may not rely on criteria paragraphs (5) or (7) under Question 9 of this section to omit your proposal for that meeting. In calculating the 3%, you may include your own shares even if the proposal is your own. The percentage is based on the total number of voting shares outstanding for the year before the year for which the meeting is held. You should find that number in the company's annual report to shareholders for that year.

(2) However, it is your obligation to demonstrate that you have, or have gathered, the required support for including your proposal, by providing the company:

(i) A written statement from each of your supporters stating his or her support for the inclusion of your proposal in the company's proxy materials for a specific meeting of shareholders. The written statement must be executed and dated as of a date no earlier than the date of the company's annual meeting for the previous year. If the company did not hold a meeting the year before, the statement must be dated no more than one year before the scheduled date of the meeting for which the proposal is submitted; and

(ii) A written statement from the record holder of each supporter's shares, specifying the number of shares that the supporter held as of the date of the statement described in paragraph (j)(2)(i) of this section. It is your obligation to collect this evidence from your supporters, and to present it to the company in an organized, understandable form. You must provide the company with copies of the evidence by the due date for submitting a proposal.

(k) *Question 11: How many proposals sponsored by other shareholders may I support under the ''override'' mechanism described in the answer to Question 10 of this section?* At each company, you may support no more than one proposal sponsored by other shareholders under the ''override'' mechanism described in the answer to Question 10 of this section. Of course, this does not affect your ability to sponsor your own proposal. If the proposal is your own proposal, then it does not count against that limit.

(l) *Question 12: What procedures must the company follow if it intends to omit my proposal?* (1) If the company intends to omit a proposal from its proxy materials, it must file its reasons with the Commission no later than 40 calender days after the date that it receives your proposal, and no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 40 days after receiving your proposal, or 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies (or alternatively file via e-mail to the following address: shprop@sec.gov) of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may omit the proposal, which should if possible refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(m) *Question 13: May I submit my own statement to the Commission responding to the company's arguments?* Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You may submit either six paper copies of your response, or alternatively, you may make your submission via e-mail to the following address: shprop@sec.gov.

(n) *Question 14: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?* (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

Dated: September 18, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

Concurrence of Commissioner Steven M.H. Wallman

The Commission today (Release No. S7–25–97) proposes a ''package'' of changes to the current process for submitting shareholder proposals. Not only does this process preclude valid shareholder debate on issues of significant importance to the companies in which shareholders invest, it also imposes burdens on corporations and on this Commission, such as requiring the Commission to engage in line-drawing for which it is ill-suited. A year ago I proposed changes to the rules to make them fairer and to eliminate much of that line-drawing. And I have repeatedly called for the reversal of Cracker Barrel—independent of any other or more comprehensive reform.

I recognize and appreciate how difficult it is to craft a solution to the problems posed by these rules, and I commend the staff and my colleagues for their efforts today. As a practical matter, those who are active participants in the shareholder proposal process are small in number—especially when compared with the number this Commission regulates or influences in other activities. But the practical impact of what can be accomplished through shareholders appropriately engaged in their corporations' affairs is enormous. Part of what makes our economy strong and our corporations successful is our system of active shareholders engaged in debate over matters of concern. And those matters consistently have included issues relating to corporate governance, workplace practices and social issues.

Because I believe so strongly in the benefits that accrue from responsible shareholders acting responsibly, I am concerned by this proposed ''package.'' While I concur in the issuance of this release so that the debate may begin, I believe this proposal may not have

sufficient benefits for the shareholder community to outweigh the detriments to that community and, therefore, may not be balanced. Moreover, I remain opposed as a matter of principle to the notion of holding the reversal of Cracker Barrel hostage to the success or failure of an overall reform effort. I urge my colleagues again to consider its immediate reversal.

I understand this is a complicated area involving many players with often divergent interests. Moreover, not all members of the corporate community, or the shareholder community, are affected in the same manner by either the current or the proposed process. Some companies have never received a shareholder proposal, while others receive a multitude on a yearly basis. Likewise, some proponents have no difficulty in placing their resolutions in the company's proxy statement, while others face a yearly battle to avert exclusion.

Under today's proposal, if it is adopted, the proponent community will obtain some benefit from the reversal, at least in form, of Cracker Barrel, as well as a lower economic standard under the relevance exclusion, and the availability for the first time of a shareholder override. From a practical perspective though, these benefits will primarily assist those proponents who currently have potential difficulty obtaining access to the proxy statement—such as social groups sponsoring social policy proposals related to employment. Since most shareholder proposals are not so characterized, this package provides little for all other proponents.

And with regard to social proposals, it remains to be seen whether the proposed changes will result in any increased access to the proxy statement. While Cracker Barrel may be reversed in form if the proposals are adopted, it is unclear from the release whether it will be reversed in substance. Although social policy proposals related to employment will no longer be automatically excludable, neither will they be automatically included.[1] The return to subjective line-drawing by the staff, coupled with the shift to a purely economic test under the relevance exclusion, leaves open the possibility of continued attempts to exclude many social proposals (whether related to employment or not).[2] While theoretically proponents of social proposals could be helped by the availability of a shareholder override, the burdens of the currently proposed override—a threshold set at the high level of 3%[3] combined with the practical difficulties of soliciting or doing a major publicity campaign[4]—will constrain its practical effectiveness.[5]

As to detriments, all members of the proponent community will be adversely impacted by the increased resubmission thresholds—thresholds that, as proposed, will rise to the very high level of 30% in the third year—without any practical benefits being provided in return to a large percentage of the proponents. Likewise, for those members of the proponent community who might use Rule 14a–4 in lieu of rule 14a–8, the proposed tightening of Rule 14a–4 will be troublesome. And to the extent that any part of the package is changed to decrease the benefits or increase the burdens on the proponent community, the lack of balance may well become intolerable.

Although I have strong reservations about this package as a whole and about specific provisions,[6] I vote today to issue this release to ensure that debate will ensue on this matter. In its current form, I agree that the release can be used to frame the issues and I believe it is in the best interests of all of those involved in the shareholder proposal process for change to be commenced as soon as possible. My hope would be that any changes ultimately adopted will, in fact, properly balance the interests of companies and shareholders.[7]

In any event, I must stress my dismay at the failure of this Commission to reverse Cracker Barrel. The continuation of Cracker Barrel over the past four years has been a terrible mistake—not from a practical perspective but rather from a policy perspective. As I have stated previously, Cracker Barrel has had little practical effect—most proponents of the types of proposals excludable under Cracker Barrel either succeed in having the companies include their proposals anyway, or otherwise have their concerns addressed and withdraw their proposals voluntarily. Nevertheless, Cracker Barrel is bad public policy because the wrong message is sent as to what the Commission believes is important. I fail to understand why its reversal can only be considered as part of any broader reform—after all Cracker Barrel was imposed on the proponent community without any reforms for their benefit and has tilted the balance, as a matter of principle, over these last four years in an unacceptable manner.

Finally, stepping back from the issue of whether Cracker Barrel should be reversed only as part of overall reform or on its own, the practical realities are that this reform proposal, with or without Cracker Barrel, likely cannot be adopted in time for the 1998 proxy season. The specter of continuing Cracker Barrel for yet another proxy season should simply be unacceptable. I strongly urge my colleagues to do the right thing—reverse Cracker Barrel now, in time for the 1998 proxy season.

I respectfully concur in the issuance of this release.

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BILLING CODE 8010–01–M

[1] The release is unclear on whether new lines will be drawn and where those lines will fall.

[2] Since the new proposed economic test under the relevance exclusion focuses solely on historical financial statement components, it also excludes shareholder proposals motivated by far more important possible material liabilities or prospective costs, such as boycotts, negative publicity or lawsuits. The result is that this exclusion could be even more restrictive than Cracker Barrel. As an example, if a company employs slave labor in a small plant in Asia, a proposal relating to that operation would be excludable under this test, notwithstanding the significant potential costs to the company and its shareholders from the company's pursuing such a policy.

[3] Three percent of the outstanding stock of large corporations involves dollar amounts in the billions; it is unclear why the support of such a large financial stake is necessary before a proposal may be placed on the ballot.

[4] Moreover, the proposal does not require access to shareholder lists (although Rule 14a–7 theoretically may be useful)—and may be dependent on adequate relief under Sections 13(d) and 14 of the Securities Exchange Act of 1934.

[5] I am also concerned about the specter that the existence of the override—a concept that I originally proposed, but in a different context, and that I still independently support—will be used as a rationale for the staff's engaging in overly broad interpretations of the exclusions under Rule 14a–8 on the grounds that, if shareholders want the resolutions included, they can avail themselves of the override.

[6] I also am concerned about the extent of the reliance on the Division's Questionnaire as a basis for today's proposals given the failure to use scientific sampling in both its design and its distribution.

[7] As an additional goal, it would be worthwhile to reduce as much as possible the staff's role as line-drawers. One alternative that could accomplish this goal would be to permit all resolutions to be included subject to whatever exclusions the states wished to impose as a matter of internal corporate affairs—and the release asks questions about this approach. I suspect that both companies and shareholders will find this option to be impracticable. If they do not, I believe the Commission should give it more thought.

federal register

Friday
September 26, 1997

Part IV

Federal Election Commission

11 CFR Parts 102, 104, and 108
Recordkeeping and Reporting; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104 and 108

[Notice 1997–14]

Recordkeeping and Reporting

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission requests comment on proposed revisions to regulations that govern recordkeeping, reporting, and filing with State officers under the Federal Election Campaign Act of 1971, as amended (''the Act'' or ''FECA''). The proposed revisions, many of which are technical in nature, would clarify and simplify requirements for recording, reporting, and filing reports of campaign-related receipts and disbursements. The revisions are intended to address issues that have arisen since the rules were last amended. Please note that the draft rules which follow do not represent a final decision by the Commission on issues presented in this rulemaking.

DATES: Comments must be received on or before October 27, 1997. If the Commission receives requests to testify, it will hold a hearing on November 5, 1997 at 10:00 a.m. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to ''reprec@fec.gov''. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The FECA's principal requirements for recording and reporting contributions and expenditures in connection with Federal elections currently appear at 11 CFR 102.9 and 104.3. The first rule prescribes procedures for committees that qualify as political committees under the Act to follow in recordkeeping. The second sets forth procedures for political committees to follow in reporting campaign-related receipts and disbursements. The procedures apply to authorized committees, i.e. committee(s) designated by a candidate to receive contributions and make expenditures on his or her behalf, and unauthorized committees, those not so designated by a candidate. 11 CFR 100.5(f).

Although the Commission has made several changes to these sections in earlier rulemakings, it is now taking a comprehensive look at the recordkeeping and reporting requirements. Disclosure of campaign finance in connection with Federal elections is a major goal of the FECA, as recognized by the Supreme Court. See *Buckley* v. *Valeo*, 424 U.S. 1, 67–69 (1976). Hence, the Commission is undertaking to clarify—and where possible, to simplify—the requirements. The Commission is aware of the ongoing need to balance the public interest in effective and timely disclosure with the concerns of the regulated community about reporting burdens. Thus, the draft rules propose several key changes: reorganizing the reporting requirements by retaining the provisions applicable to unauthorized committees at 11 CFR 104.3 and moving the reporting requirements for candidates' authorized committees to new 11 CFR 104.17; permitting alternatives for reporting loan repayments; simplifying the reporting requirements for draws on a line of credit; and clarifying procedures for reporting disbursements paid by credit card(s).

Concurrently, a review is underway of the relevant reporting forms: Form 3 for authorized committees and Form 3X for unauthorized committees. Under the proposed revisions, the rules and forms would be revised in a parallel manner. Draft revised Form 3 and Form 3X are available on request from the Commission's Public Records Branch at 999 E Street, NW, Washington, DC 20463 (202/219–4140 or 800/424–9530).

Lastly, the Act's requirements for filing reports with State officers appear at 11 CFR part 108. The regulations provide that any reports required under the Act are also required to be filed with the Secretary of State, or other State officer, of the appropriate State(s). The regulations identify the ''appropriate'' State(s) and set forth duties for State officers regarding the reports. *See, e.g.*, 11 CFR 108.2 and 108.6. The Commission seeks to comport these rules with recent amendments to the FECA, providing that these requirements do not apply in certain circumstances. Public Law No. 104–79, 109 Stat. 791 (1995).

The Commission seeks comment on the proposed regulations. It requests that any comments on the reporting forms be forwarded with comments on the proposed reporting rules. The Commission also welcomes comments on the recordkeeping and reporting process, in general, including any issues not covered by the proposed regulations. A summary of the proposed revisions follows.

A. Proposed 11 CFR 102.9—Accounting for Contributions and Expenditures

Proposed § 102.9, governing recordkeeping for contributions and expenditures, would redesignate current paragraphs (a)(1)–(3) as paragraphs (a)(2)–(4), respectively. The draft rule also would propose several substantive changes for procedures set forth at current paragraphs (a), (b) and (d).

1. Proposed Recordkeeping for Contributions

The proposed revisions first would codify recordkeeping requirements for contributions of $50 or less. A committee would have two options for maintaining this information. It may retain the information specified for contributions in excess of $50 at redesignated paragraph (a)(2). Or, for many small contributions received at a fundraising event, the committee may record the name of the event, the date(s) contributions are received at the event, and the total amount of contributions received on each day of the event.

The Act requires that a treasurer of a political committee maintain an account of all contributions received by or on behalf of the committee but does not specify how records should be kept of receipts under $50. 2 U.S.C. 432(c)(1). Currently, the rule elaborates that the treasurer may use ''any reasonable accounting procedure'' to maintain these records. 11 CFR 102.9(a). The Commission has suggested methods of recording receipts under $50 in Advisory Opinions (''AO'') 1981–48 and 1980–99. This section would codify that guidance at new paragraph (a)(1).

2. Proposed Recordkeeping for Disbursements

The draft rule would continue the current rule's definition of ''payee''. See proposed paragraph (b)(2)(i)(A). The rule would provide that a ''payee'' is a

person who receives payment directly from the committee, or indirectly from an agent of the committee, in return for goods or services extended to the committee or its agent. To comply with the proposed section, a committee therefore must retain records for all disbursements it makes, including those by its agent, or primary payee, to other vendors that perform work for the committee, or secondary payees. As presented later, a committee similarly would be required to report all disbursements: payments to primary payees would be reported as disbursements and, under certain circumstances, payments to secondary payees would be reported as memo entries. See proposed §§ 104.3(c)(2) and 104.17(c)(2).

The Commission has addressed recording and reporting disbursements to payees in AO 1996–20, AO 1983–25 and in audits. In AO 1996–20, the Commission determined that the principal campaign committee (''PCC'')—the committee designated by the candidate as his main authorized committee—for the re-election of a Member of Congress was permitted to reimburse the Member's Chief of Staff (''COS'') for his campaign-related travel expenses. See 11 CFR 100.5(e)(1), 101.1 and 102. The Commission stated that the PCC must report as memo entries the COS' payments to vendors for the travel expenses ''* * * to achieve full disclosure but not inflate disbursement figures.'' See AO 1996–20, note 3. The Commission reached a different conclusion in AO 1983–25. There, the Commission determined that, after a presidential PCC made direct payments to certain media consultants, it was not required to itemize payments by the consultants to other vendors which performed work for the PCC as long as records were maintained for the latter disbursements.

The draft rule would codify the guidance of AO 1996–20 for two reasons. First, the reporting method referenced in this opinion would indicate how a committee's disbursements are actually used and, thus, would serve the disclosure policy underlying the Act. Relying alone on the recordkeeping requirements in AO 1983–25 would not as effectively result in such disclosure.

Next, the two committees in the opinions are different legal entities under the Act. The Presidential campaign committee was a recipient of public funding and, therefore, was required to undergo a mandatory audit. 26 U.S.C. 9007 and 9038. It also was required to maintain records of disbursements to secondary payees. See 11 CFR 9003.5, 9033.1(b)(7) and 9033.11. Hence, even if publicly funded committees were not required to report disbursements to secondary payees, the Commission could rely on audits to examine these disbursements. On the other hand, Title 2 committees, such as the PCC in AO 1996–20, do not receive public funding and are not required to be audited by statute. Compare 2 U.S.C. 438(b). Thus, the mechanism of a recordkeeping and reporting requirement is necessary so that the Commission may examine how Title 2 committees directly, and indirectly, use funds. The Commission welcomes comments on the proposed clarification.

The draft rule would revise the recordkeeping requirements in other respects. The draft rule would more clearly state that an individual who receives an advance from a committee for his or her own travel or subsistence would be a ''payee''. The draft rule would raise the amount of the qualifying advance from $500 or less to $1,000 or less, to accommodate inflationary increases. See proposed paragraph (b)(2)(i)(B).

The documentation requirements for disbursements also would be revised. The draft rule would require that if a committee makes an advance for travel or subsistence expenses, it must keep all expense account documentation related to the advance. The present rule requires only that the committee maintain ''the expense voucher or other expense account documentation'' (emphasis added). Thus, committees now may satisfy their recordkeeping obligations by retaining only one type of documentation, even if more records originally existed for a particular expense. The Commission proposes this change because the present rule may conflict with the general requirement to maintain records stated at 11 CFR 104.14. Moreover, the Commission has discovered that an expense voucher may have required information that other expense account documentation lacks, or vice-versa. The proposed documentation requirement would not require committees to create new records. Rather, it would clarify that committees must preserve all records related to disbursements, consistent with § 104.14.

The draft rule specifically would address documentation requirements for disbursements by bank draft accounts and debit cards. These financial instruments are more commonly used today by committees and have unique characteristics. Therefore, the Commission is providing guidance on how to retain required information for transactions based on these. The Commission also would welcome comments on suitable documentation for these transactions. Please note that the proposed requirements for bank draft accounts are distinct from those for share draft accounts at credit unions, addressed at current paragraph (b)(2)(iii). The new provisions would address a current concern of committees and lead to more complete, useful information for committees and the Commission. *See* proposed paragraph (b)(2) and new paragraphs (b)(2)(iv) and (v).

Further, the draft rule would clarify that a committee treasurer must comply with both the ''best efforts'' rule and the requirements of 11 CFR 104.14. Principally, a treasurer would be required to meet the recordkeeping duties set forth at proposed § 102.9 and, at the same time, to maintain bank records and other documents related to reports required under 11 CFR part 104. See proposed paragraph (d).

The proposed revisions also would require that, in recording contributions to candidates, a committee identify the election(s) for which these are made. *See* proposed paragraph (b)(1)(iii). In addition, the proposed revisions would amend paragraph (b)(1)(iv) of the section to cross-reference the new citations for the definition of ''purpose'' in proposed §§ 104.3 and 104.17. The final rules will contain conforming amendments to other sections of the regulations to reflect the revisions proposed for this section.

B. Proposed 11 CFR 104.3—Contents of Reports for Unauthorized Committees

1. Proposed Restructuring of Current 11 CFR 104.3

The Commission proposes to restructure, into two sections, 11 CFR 104.3 which governs the contents of reports political committees must file. Proposed 11 CFR 104.3 would state the requirements applied to all unauthorized committees for reporting receipts and disbursements. The corresponding requirements for authorized committees would appear at new 11 CFR 104.17. (Please note that the Commission recently repealed former 11 CFR 104.17 as an obsolete rule. 60 FR 56506 (November 9, 1995.)) The purpose of the proposed restructuring is to clarify points of Commission policy, simplify the preparation of reports pursuant to 2 U.S.C. 434, and facilitate committees' efforts to locate the rules that apply to each. The Commission welcomes comments on the proposed restructuring.

2. Proposed Reporting Requirements for Unauthorized Committees

As amended, the section would follow the organization of current 11 CFR 104.3 except for the changes discussed below. Most of the proposed changes would appear at draft paragraphs (b), (c), (k) and (l) to address procedures for reporting receipts and disbursements, amending reports and reporting disbursements paid by credit card(s), respectively. New paragraph (a) would state the rule's scope and refer authorized committees to the reporting requirements at new § 104.17.

a. Reporting Receipts of Unauthorized Committees

The proposed amendments would delete the reference to traveler's checks in the definition of ''Cash on hand''. Under this amendment, a committee may hold traveler's checks only after receiving these as contributions, see 11 CFR 104.8, and before depositing these pursuant to 11 CFR 103.3(a). The proposed amendment is intended to comport with the Act and to address substantial problems raised by the use of traveler's checks for disbursements. The Act requires that, except for petty cash fund expenditures, a committee issue a check from an account at its campaign depository to make a disbursement. 2 U.S.C. 432(h). See also 11 CFR 102.10 and 103.3. Traveler's checks are unlike these checks: traveler's checks are not forwarded to a committee's campaign depository and are unavailable for review. Thus, at times committees have been unable to identify payees or the purpose of disbursements by traveler's checks, and the Commission's efforts to evaluate a committee's compliance with the Act have been frustrated. The Commission welcomes comment on the proposal to limit the role of traveler's checks in campaign finance. See redesignated paragraph (b)(2).

The categories and itemizations of receipts for unauthorized committees would be reorganized and revised in draft paragraphs (b) (3) and (4). Concurrently, Form 3X would be revised to conform to the proposed rule. Similar provisions for authorized committees would be addressed in new § 104.17.

Paragraph (b)(3) would set forth the revised categories of receipts that must be reported on the Detailed Summary Page of Form 3X. The revisions would reflect the types of receipts received by unauthorized committees in recent years. For example, the draft rule would add two new categories: ''loan repayments received'' and ''refunds of contributions made by the reporting committee to political committees''. See proposed paragraphs (b)(3) (vi) and (viii). In addition, the Commission proposes to reduce the burden on committees by deleting the itemized and unitemized sub-categories for ''offsets to operating expenditures'' and ''other receipts''. *See* proposed paragraphs (b)(3) (vii) and (ix). The draft rule also would clarify that the category of ''contributions from persons'' would include contributions from committees that do not qualify as political committees under the Act, and that ''offsets to operating expenditures'' would refer to rebates and refunds from vendors. See proposed paragraphs (b)(3) (i), (ii) and (vii). Further, the draft paragraph would require year-to-date reporting for itemized and unitemized sub-categories.

The proposed itemizations of receipts for unauthorized committees, which must be reported on Schedule A of Form 3X, would follow the revisions proposed for reporting categories of receipts, discussed above. Thus, the proposed rule would add an itemization for loan repayments received, clarify that the current itemization for ''offsets'' refers to rebates and refunds from vendors, and add an itemization for refunds of contributions. See proposed paragraphs (b)(4) (v)–(vii).

b. Reporting Disbursements of Unauthorized Committees

The draft rule would reorganize and revise requirements for reporting categories and itemizations of disbursements at proposed paragraphs (c) (1) and (2). The proposed revisions would appear on Form 3X, concurrently under revision. (Similar requirements for authorized committees would be moved to new section 104.17.) The draft rule also would cross-reference new reporting requirements for disbursements paid by credit card found at new paragraph (l).

The categories of disbursements, which are reported as total amounts on the Detailed Summary Page of Form 3X, would be revised to reflect contemporary disbursement practices by committees. Illustratively, the categories for refunds of contributions to persons and to political committees would replace ''offsets''. See proposed paragraphs (c)(1) (ix) and (x). These revisions also would correspond to amendments proposed for reports of receipts. To ease committees' reporting burdens, the draft rule would delete itemized and unitemized sub-categories for ''other disbursements''. See proposed paragraph (c)(1)(xii). The proposed amendments additionally would clarify which disbursements are covered by categories in the current rule for operating expenditures, transfers to affiliated or party committees, coordinated party expenditures under 11 CFR 110.7, and other disbursements. See proposed paragraphs (c)(1) (ii), (iii), (vi), and (xii). As for receipts, the proposed rule would require year-to-date reporting for itemized and unitemized sub-categories of disbursements.

The revised itemizations of disbursements for unauthorized committees, which must be reported on Schedule B of Form 3X, would appear at proposed paragraph (c)(2). The amended rule would clarify that a committee may report a loan repayment in two ways: report the sum of the principal and interest as a single loan repayment, or report the principal as a loan repayment and the interest as an operating expenditure. (Committees would continue to report on Schedule C repayments of principal and the outstanding principal balance for each loan.) In the past, the Commission has instructed that each interest payment be reported as a separate operating expenditure. See AO 1991–9 and AO 1986–45. Although the latter method is consistent with the Act's requirements, the former may be easier for reporting committees. The Commission seeks to ease the reporting burden on committees and requests comment on the proposal to permit alternative reporting methods for loan repayments. See proposed paragraph (c)(2)(vi).

The Commission seeks comments on related points raised by Schedule D. For example, should a committee report as a payment toward a debt incurred for goods or services only the principal paid and report as an operating expenditure the finance charges paid? Or, should a committee report the sum of these as a debt payment? The Commission is considering permitting both reporting methods, and requiring that payments (including accrued interest) on debts owed *to* a committee be reported along similar lines.

The revisions proposed for itemizations of disbursements generally would follow the revisions proposed for categories of disbursements, discussed above. Thus, a committee would itemize ''refunds of contributions'' to persons and to political committees in place of ''offsets to contributions''. See proposed paragraphs (c)(2) (viii) and (ix). The proposed rule would add a requirement that, for certain itemized disbursements, a committee identify the election for which the disbursement was made. See proposed paragraphs (c)(2) (iii)–(v) and (vii). Where a disbursement is a

contribution, a committee would be required to identify the election for which it made the contribution and, hence, the particular contribution limit against which the contribution must be counted, e.g. 1998 General Election. See 2 U.S.C. 441a.

c. Additional Revisions to Section 104.3

Significant changes are proposed at paragraphs (e), ''Reporting debts and obligations'', (h), ''Legal and accounting services'', (k), ''Amending reports'', and (l), ''Credit card payments'', of the draft rule. With respect to paragraph (e), the provision governing loans to candidates would be moved to new § 104.17. The proposed revisions also would simplify the current rule to require that, for a line of credit, a committee file Schedule C–1 only when it reports the receipt of a line of credit or a restructuring of the line. As revised, the rule would require a committee to report each draw on a line of credit only as a receipt on Schedule A.

The Commission proposes to simplify the reporting requirements because it appears that committees often make numerous draws on a line of credit in a single day. The draws usually are made without restructuring the line of credit, i.e. changing the repayment terms such as the interest rate. The Commission therefore has questioned the present practice of requiring a Schedule C–1 for every routine draw. The Commission believes that it would be more informative to require that, after the initial Schedule C–1, a committee file a subsequent Schedule C–1 only to report a restructuring of the line. This approach would ease the burden on committees while protecting the public interest in disclosure. The Commission emphasizes that a committee would remain obligated to report, as with any debt or obligation, the outstanding balance on a line of credit on Schedule C.

The reporting requirements would be streamlined for a committee that receives legal and accounting services pursuant to 11 CFR 100.7(b) (13) and (14). Draft paragraph (h) would delete the current requirement that a committee report each person providing the services. The Commission also is proposing to institute a $200 threshold for ''itemizing'' receipts of these services: a committee would specify in a memo entry, on Schedule A, the regular employers of persons providing the services which have spent more than $200 for the services during the calendar year. For ''unitemized'' receipts of the services, or those from employers which have not met the $200 threshold, a committee instead would report as a memo entry, on Schedule A, the total of amounts paid by regular employers for the services and maintain all records of the services as described in 11 CFR 102.9(c). A memo entry is supplemental information about a specific transaction, and the dollar amount recorded in the memo entry is not included in the totals reported on the Detailed Summary Page for Form 3X (or Form 3). Thus, for an employer meeting the $200 threshold, a committee would report a memo entry: Employer A/Address, $50, on 11/22/96 (where Employer A had spent $250 for the services in 1996). For regular employers not meeting the threshold, a committee would report a memo entry: $500 received in ''unitemized'' exempt legal and accounting services (for example, to reflect 5 employers which individually had not spent more than $200 for the services in 1996).

New paragraph (k) would be added to clarify the process for amending reports that are filed with the Commission in hard-copy form. The new paragraph would present: the deadline for filing an amendment; optional methods for filing amendments; and a provision for identifying the specific changes in the amended report(s). These provisions would apply both to amendments prompted by a Commission notice and to those initiated by a committee after discovering an error, omission or change in information. The Commission proposes to standardize the amendment process to simplify a committee's reporting obligations. The proposed revisions also are intended to address an issue that frequently arises concerning amendments to longer reports as well as shorter reports, such as Schedule H–4 (''Joint Federal and NonFederal Activity Schedule''). A mechanism to quickly and clearly identify the changes on amended pages, or reports, submitted by a committee is necessary to ensure the accuracy of the Commission's database and to assist the review of disclosure reports. The draft rule provides one mechanism for ensuring that the Commission and the public are able to locate easily new or amended information in a report. The Commission welcomes suggestions as to other effective methods for achieving this result, and seeks comment generally on the proposed amendment process. In addition, the Commission notes that a committee which amends an electronically filed report must follow a different procedure set forth at 11 CFR 104.18.

New paragraph (l) would clarify and simplify reporting obligations for disbursements paid by credit card. These provisions would apply to all disbursements subject to the requirements proposed for categories of disbursements, and itemized entries for the categories, discussed earlier. The new paragraph would define a credit card as representing a credit account with a depository institution or other corporation that is not a depository institution. See 11 CFR 103.2. For some credit cards, the monthly balance must be paid in full; for others, it may be paid in part or in full. A committee would be required to itemize on Schedule B each payment to a credit card company, the depository institution or other corporation receiving the payment, the date and the amount of payment. For example, for a payment that covers an entire monthly balance, the committee would report: ABC National Bank (VISA), Anytown, Any State, 12/05/96, $2,000.00. The committee also would include the payment in the total for the appropriate category on the Detailed Summary Page of Form 3X (or Form 3).

Under the new provisions, if the disbursement is a partial payment of a monthly credit card balance, the committee first would report the information required for a full payment, as noted above, and next report a memo entry on Schedule B. The memo entry would report the creditor, the outstanding credit balance, and the corresponding date. In the example above, the committee would report as a memo entry: ABC National Bank (VISA), $1,000 balance, as of 12/05/96. It would not include $1,000 in the appropriate totals on the Detailed Summary Page, but it would report the unpaid balance as a debt under 11 CFR 104.11(b).

Whether paying its bill in full or in part, a committee also would be required to report, as a memo entry on Schedule B, each expenditure that is separately listed on a monthly credit card statement and that would be required to be itemized under proposed paragraph (c)(2). In the example above, the committee would report as a memo entry: $600 to XYZ Printing Company, Anytown, Any State, 12/01/96, by ABC National Bank VISA, for campaign literature. If a committee made multiple expenditures to a particular vendor during a single reporting period and each was required to be itemized, the committee would report a memo entry for each expenditure. Thus, a committee would itemize a disbursement to pay all, or part, of a credit card balance and would identify the itemizable, underlying expenditures that were paid by credit card. See new paragraphs (l)(2) and (3).

In the Commission's experience, many committees pay for disbursements with credit card(s) and subsequently

make partial payments to the credit card company. Thus, regulations tailored to these transactions would disclose more information about a committee's disbursements as well as identify a committee's outstanding credit balances. The Commission welcomes comment on the proposal to include the new paragraph in the reporting requirements.

Lastly, the proposed amendments would modify section 104.3 in several other respects. The draft rule would substitute the term ''savings association'' for ''savings and loan institutions'' to reflect current regulatory practice. See 12 CFR 561.43 (Regulations Applicable to All Savings Associations, Office of Thrift Supervision, U.S. Department of Treasury). In addition, the draft provision for reporting ''cash on hand'' would cross-reference to 11 CFR 104.13 to clarify that, when a committee receives a non-liquid asset (such as a computer) as an in-kind contribution, it should report the contribution in a memo entry rather than as cash. See proposed paragraph (b)(2). Current paragraph (c), ''Summary of contributions and operating expenditures'', would be adjusted to reflect the amendments proposed for reporting categories of receipts and disbursements. See proposed paragraph (d). Finally, the proposed amendments would move current paragraph (f), ''Consolidated reports'', to new § 104.17 as it relates solely to authorized committees, and add guidance for national party committees in proposed paragraph (g), ''Building funds''.

C. New 11 CFR 104.17—Contents of Reports for Authorized Committees

The new rule would contain all the reporting provisions applicable to authorized committees of candidates. Also, Form 3 would be revised to reflect these provisions. New § 104.17 generally would follow the organization of proposed § 104.3, thus simplifying the reporting process for authorized committees. The discussion below concentrates on the provisions unique to authorized committees and not discussed in the preceding discussion of proposed § 104.3.

1. Reporting Receipts of Authorized Committees

The new rule would address reporting receipts by authorized committees at new paragraph (b) and would correspond to current 11 CFR 104.3(a)(3) and (4). The categories of receipts at new paragraph (b)(3) would be reported as total amounts on the Detailed Summary Page of Form 3. The new section would specify more clearly which categories include the following receipts: contributions from the candidate; loans made, guaranteed or endorsed by the candidate; Federal matching funds for presidential candidates; and the new factor of contributions refunded by authorized committees for other Federal candidates. See new paragraphs (b)(3)(iii), (vi), (vii), and (ix). The draft categories also would provide for transfers from other committees authorized by the candidate, to the extent permitted by Commission regulations. See new paragraph (b)(3)(v) and 11 CFR 110.3(c) (4) and (5) and 110.8(d)(2). In addition, reimbursements by any person for ''personal use'' of committee funds would be added to the category of ''other receipts''. See new paragraph (b)(3)(x). ''Personal use'' consists of the use of campaign funds for an obligation of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Certain payments for travel or vehicle expenses may include both legitimate officeholder or campaign activities and personal business. The portion of these costs associated with personal activities must be reimbursed under 11 CFR 113.1(g)(1)(ii) (C) or (D).

As drafted, the categories would continue to state that coordinated party expenditures, made pursuant to 11 CFR 110.7, are not contributions and would add that loan repayments received are included as ''other receipts''. See new paragraph (b)(3) (ii) and (x). To ease reporting burdens, the draft rule would delete the requirements for reporting total itemized and unitemized ''offsets to operating expenditures'' and ''other receipts''. See new paragraphs (b)(3)(viii) and (x).

The draft rules for itemizing receipts, which must be reported on Schedule A of Form 3, would follow the changes proposed for categories of receipts. The new section also would add that an authorized committee specify the election for which contributions from persons and from political committees are made when it itemizes the contributions. See draft paragraphs (b)(4) (i) and (ii). In addition to the requirements at proposed § 104.3, a committee would be required to itemize all loans it has received including those made to the candidate as the committee's agent. If any loan itemized under draft paragraph (b)(4)(v) represents a contribution by a lender, endorser or guarantor, the committee would be required to report the election for which the contribution was made. As drafted, the section would add a provision governing the itemization of contributions by the candidate, excluding any loans by the candidate. See new paragraph (b)(4) (iii) and (v).

2. Reporting Disbursements of Authorized Committees

The new rule would govern reporting disbursements at new paragraph (c). This new paragraph would correspond to current 11 CFR 104.3(b) (2) and (4).

One issue on which the Commission seeks comment concerns the requirement that authorized committees report the ''purpose'' of committee disbursements. See new paragraphs (c)(2)(i) (A) and (B). In particular, the Commission seeks comment on whether to require more information on committees' statements of ''purpose'' in the interests of monitoring adequately possible instances of personal use of campaign funds. 11 CFR 113.1(g)(1) (i) and (ii). It is intended that any new requirement would generate meaningful disclosure about committee disbursements, as intended by the Act, without significantly increasing committees' reporting burdens.

The Commission's current regulations closely follow the legislative guidance on this point:

> It is the opinion of the Committee that the purpose requirement will be satisfied by a short statement or description, no more than one or two words in most cases, of why the money was spent. The particulars, i.e., the details, of the disbursement are not required by the statute.

H.R. Rep. No. 422, 96th Cong., 1st Sess. 18 (1979). Despite suggestions in comments received in the Commission's rulemaking on ''personal use'', 60 FR 7862 (February 9, 1995), the Commission has been reluctant to conclude that the purpose statement serves only to regulate personal use of campaign funds. These statements provide required information about other committee disbursements, such as a committee's contributions to a committee authorized by another candidate. Over the years, however, purpose statements often have lacked sufficient detail to enable the Commission to determine whether a certain disbursement represents a candidate's personal use of campaign funds. See Matter Under Review 3107. In addition, a more informative purpose statement may be necessary to determine whether a disbursement by an authorized committee for an office-holder not seeking re-election is impermissible personal use.

The Commission is obligated to enforce the Act's prohibition on personal use of campaign funds. 2 U.S.C. 439a. Currently, the only

reporting provisions addressing this ban are the requirement for statements of purpose and the requirement to describe certain disbursements for travel and vehicle expenses for which the committee expects reimbursement. See 11 CFR 104.17(c)(2)(i) (A) and (B); 11 CFR 113.1(g)(1)(ii) (C) and (D). Hence, the Commission requests comment on possible mechanisms for generating more disclosure of the purpose of committee disbursements without heavily burdening reporting committees.

As drafted, the new rule would cross-reference to draft paragraph (l) governing disbursements paid by credit card. The categories of disbursements, at new paragraph (c)(1), would be reported as total amounts on the Detailed Summary Page of Form 3. The draft rule would specify which categories include the following receipts: transfers to other committees authorized by the candidate; repayments of loans made or guaranteed by the candidate; and disbursements by authorized committees for presidential candidates not subject to the limitations at 11 CFR 110.8. See new paragraphs (c)(1) (ii)–(iv). Also, the new rule would add a category for contributions to committees authorized by other candidates for Federal office. See new paragraph (c)(1)(viii). The new categories of refunds of contributions to persons and to political committees would replace the current category of ''offsets to contributions''. See new paragraphs (c)(1) (v) and (vi). To ease committees' reporting burdens, the new rule would eliminate reporting itemized and unitemized subcategories for ''other disbursements''. See draft paragraph (c)(1)(ix).

Paragraph (c)(2) would contain the reporting requirements for itemizing disbursements on Schedule B of Form 3. The draft rule would add a requirement that a committee identify the election for which contributions and loans to authorized committees for other candidates are made. See new paragraphs (c)(2) (iii) and (v). A committee would be required to itemize repayments for all loans used in the campaign, whether these were made to the committee or to the candidate. See draft paragraph (c)(2)(iv).

3. Additional Revisions to New Section 104.17

Generally, new paragraphs (d)–(l) would correspond to proposed paragraphs (d)–(l) of § 104.3 with certain exceptions. The draft rule would provide for reporting loans to candidates and would move ''Consolidated reports'' from current 11 CFR 104.3(f). See new paragraphs (e)(2), (3) and (g).

The final rules will contain conforming amendments to other sections of the regulations to reflect changes in cross-reference citations, resulting from the reorganization of 11 CFR 104.3 into two sections and the proposed revisions included therein.

D. 11 CFR Part 108—Filing Copies of Reports and Statements With State Officers

The FECA governs, *inter alia*, the filing of campaign finance reports and statements by political committees with Secretaries of State or equivalent State officers. Similarly, the Act specifies the duties of State officers to maintain the duplicate reports. 2 U.S.C. 439. On December 28, 1995, Public Law No. 104–79, 109 Stat. 791 (1995), amended the FECA to provide that the filing and maintenance requirements no longer apply where the Commission determines that a State maintains a system that permits electronic access to, and duplication of, reports and statements filed with the Commission. Public Law No. 104–79, section 2 (codified at 2 U.S.C. 439(c)).

The proposed rule would revise 11 CFR part 108 to conform to the statutory amendments. It also would ease reporting burdens for political committees and other persons as well as filing responsibilities for State offices. For example, an unauthorized committee or other person, making independent expenditures under 11 CFR part 109, would not be required to file a copy of campaign finance reports with the relevant State officer where the Commission has determined that the State office maintains a system that can receive and duplicate optically imaged reports from the Commission. Optically imaged reports are stored on special optical disks. See proposed §§ 108.1(b)(1) and 108.3(b). These are unlike microfilm and microfiche. This method also is distinct from electronic filing of reports, which was the subject of a separate rulemaking by the Commission. See 61 FR 42371 (August 15, 1996). Current technology requires that the images be stored and maintained on specialized equipment at the Commission. To access and retrieve these images, states must have the equipment necessary to connect to the Commission's imaging system. Although currently no state office has the necessary capability, the Commission expects that states will begin to gain the capability in the near future.

The proposed revisions would apply to reports filed in connection with primaries for presidential and vice-presidential candidates as well as reports by unauthorized committees in connection with a presidential election. See proposed §§ 108.2 and 108.4. The revisions also would apply to reports filed in connection with a candidate's campaign for the office of Representative in, Delegate or Resident Commissioner to the Congress. The 1995 amendments and a subsequent rulemaking on the point of entry for campaign finance reports provide that these reports now are filed with the Commission rather than the Clerk of the House of Representatives. Public Law 104–79, section 3; 61 FR 3549 and 6095 (February 1 and 16, 1996). Hence, the Commission includes the reports in the optical imaging process and is able to make the reports available to State offices.

However, reports filed by a candidate, or authorized committee(s) of a candidate, to the office of Senator would not be covered. Since these reports are filed with the Secretary of the Senate, the Commission does not receive the original reports and cannot optically image the copies it receives. Consequently, it is unable to make the reports available to State offices by this method. See proposed § 108.3.

Lastly, the provisions governing the duties of state officers to maintain the duplicate reports would be modified to correspond to the 1995 amendments. See proposed § 108.6.

The Commission seeks comment on all proposed revisions to the regulations concerning recordkeeping, reporting, and filing with State offices and on the proposed conforming amendments. The Commission also welcomes comment on these requirements generally, including any issues not covered by the proposed regulations. Please note that a subsequent rulemaking may cover other issues addressed by parts 102 and 104.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

(Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The majority of the attached proposed rules would clarify recordkeeping and reporting requirements under the Federal Election Campaign Act, and any affected entities already are required to comply with the Commission's requirements in this area. The remaining attached proposed rules for filing copies of reports with State officers would conform to statutory amendments and reduce any reporting burden of affected entities. Therefore, these rules would not have a significant

economic effect on a substantial number of small entities.

List of Subjects

11 CFR Part 102

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.9 would be amended by redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4), respectively, by adding new paragraph (a)(1), by revising newly designated paragraphs (a)(2) through (4), the last sentence of (b)(1) introductory text, (b)(1) (iii) and (iv), (b)(2) introductory text and (b)(2)(i) (A) and (B), by adding new (b)(2) (iv) and (v), and by revising paragraph (d) to read as follows:

§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).

* * * * *

(a) * * *

(1) For contributions of $50 or less, a committee may satisfy the requirements of this section by keeping either: the name and address of each contributor, the date of receipt and the amount of each contribution; or, if the committee received many small contributions under $50 each through a fundraising event, the name of the event, the date(s) contributions were received at the event, and the total amount of contributions received on each day of the event.

(2) For contributions in excess of $50 each, the account shall include the name and address of the contributor, the date of receipt and amount of each contribution.

(3) For contributions from any person whose contributions aggregate more than $200 during a calendar year, the account shall include the identification of the person, the date of receipt and amount of each contribution.

(4) For contributions from a political committee, the account shall include the identification of the political committee, the date of receipt and amount of each contribution.

(b)(1) * * * The account shall consist of a record of:

* * * * *

(iii) if the disbursement is made for a candidate, the name, the election (e.g. primary or general) and office (including State and Congressional district, if any) sought by the candidate.

(iv) For purposes of 11 CFR 102.9(b)(1), purpose has the same meaning given the term at 11 CFR 104.3(c)(2)(i)(A) and (B) and 104.17(c)(2)(i)(A) and (B).

(2) In addition to the account to be kept under paragraph (b)(1) of this section, the receipt(s) or invoice(s) from the payee or the canceled check(s) to the payee shall be obtained and kept for each disbursement in excess of $200, by or on behalf of, the committee, except that credit card transactions shall be documented in accordance with paragraph (b)(2)(ii) of this section, disbursements by share draft or check drawn on a credit union account shall be documented in accordance with paragraph (b)(2)(iii) of this section, bank draft account disbursements shall be documented in accordance with paragraph (b)(2)(iv) of this section, and debit card transactions shall be documented in accordance with paragraph (b)(2)(v) of this section.

(i)(A) For purposes of paragraph (b)(2) of this section, payee means the person who provides the goods or services to the committee or its agent in return for payment, except that an employee of a political committee, or other individual, who receives an advance from the committee of $1,000 or less for his or her own travel and subsistence shall be considered the payee for that advance.

(B) For any advance to an employee of a political committee, or other individual, of $1,000 or less for travel and subsistence, the committee shall obtain and keep all expense account documentation including the expense voucher and the canceled check(s) to the recipient of the advance.

* * * * *

(iv) For purposes of paragraph (b)(2) of this section, a copy of the draft drawn on a bank draft account may be used as a duplicate record of the draft provided that the monthly account statement showing that the draft was paid by the bank also is retained.

(v) For purposes of paragraph (b)(2) of this section, the point of sale receipt for a debit card transaction may be used as a duplicate record of the transaction provided that the monthly account statement reflecting the debit charge also is retained.

* * * * *

(d) * * * The treasurer, or his or her authorized agent, also shall meet the requirements of 11 CFR 104.14.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(d), 432(i), 434, 438(a)(8), 438(b), 439a.

4. Section 104.3 would be revised to read as follows:

§ 104.3 Contents of reports for political committees other than authorized committees (2 U.S.C. 434(b), 439a).

(a) *Scope.* The requirements of this section apply to all political committees other than authorized committees. Authorized committees shall meet the requirements for reporting receipts and disbursements set forth at 11 CFR 104.17.

(b) *Reporting of Receipts.* (1) *General.* Each report filed under this section shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (b)(2) through (4) of this section. The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not received during the current reporting period.

(2) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings associations and other depository institutions; certificates of deposit, treasury bills and any other committee investments valued at cost. Non-liquid assets on hand, if received as in-kind contributions, should be reported in accordance with 11 CFR 104.13.

(3) *Categories of receipts.* Each report shall disclose the total amount of receipts received during the reporting period and during the calendar year for each of the following categories:

(i) Contributions from persons other than political committees, including individuals and committees that do not qualify as political committees under the Act;

(A) Itemized contributions;

(B) Unitemized contributions;

(ii) Contributions from political committees;

(A) Party committees;
(B) Authorized committees;
(C) Unauthorized committees other than party committees;
(iii) Total contributions (add contributions from persons to contributions from political committees);
(iv) Transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other party committees of the same party, regardless of whether the committees are affiliated;
(v) Loans received;
(vi) Loan repayments received;
(vii) Offsets to operating expenditures, such as vendor refunds and rebates;
(viii) Refunds of contributions made by the reporting committee to political committees;
(ix) Other receipts (such as dividends and interest);
(x) The total sum of all receipts.
(4) *Itemization of receipts.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for the contributor in each of the following categories shall be reported.
(i) Each person other than a political committee, including individuals and committees which do not qualify as political committees under the Act, who makes a contribution to the reporting committee during the reporting period, whose contribution(s) aggregate in excess of $200 per calendar year, together with the date of receipt and amount of the contribution(s), except that the reporting committee may elect to report this information for contributors of lesser amount(s) on a separate schedule;
(ii) All political committees which make contributions to the reporting committee during the reporting period, together with the date of receipt and amount of the contribution(s);
(iii) Each affiliated political committee which transfers funds to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another party committee of the same party regardless of whether the committees are affiliated, together with the date and amount of the transfer;
(iv) Each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of the loan, the date the loan was made, and the amount or value of the loan;
(v) Each person who makes a loan repayment to the reporting committee during the reporting period, together with the date and amount of the repayment;
(vi) Each person who provides an offset to operating expenditures, such as vendor rebates and refunds, to the reporting committee in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the offset;
(vii) Each political committee, including authorized committees, which refunds during the reporting period a contribution made by the reporting committee, together with the date of receipt and amount of the refund; and
(viii) Each person who provides any dividend, interest, or other receipt to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the receipt.
(c) *Reporting of Disbursements.* Each report filed under this section shall disclose the total amount of all disbursements for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (c)(1) and (2) of this section. If a committee has paid any disbursements by credit card, the committee shall report the disbursements in accordance with paragraph (l) of this section. The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not disbursed during the current reporting period.
(1) *Categories of disbursements.* Each report shall disclose the total amount of disbursements made during the reporting period and during the calendar year in each of the following categories:
(i) Shared Federal and nonfederal operating expenditures;
(A) Federal share;
(B) Nonfederal share;
(ii) Other Federal operating expenditures;
(A) Itemized expenditures;
(B) Unitemized expenditures;
(C) Total Federal operating expenditures;
(iii) Transfers to affiliated political committees and, where the reporting committee is a political party committee, transfers to other party committees of the same party, regardless of whether the committees are affiliated;
(iv) Contributions to political committees including authorized committees and unauthorized committees, such as party committees;
(v) Independent expenditures made (2 U.S.C. 434(b)(4)(H)(iii));
(vi) Coordinated party expenditures made (2 U.S.C. 441a(d));
(vii) Loan repayments made;
(viii) Loans made by the reporting committee;
(ix) Refunds of contributions to persons, including individuals, other than political committees;
(A) Itemized refunds;
(B) Unitemized refunds;
(x) Refunds of contributions to political committees;
(A) Party committees;
(B) Authorized committees;
(C) Unauthorized committees other than party committees;
(xi) Total contribution refunds (add contribution refunds to persons and contribution refunds to political committees);
(xii) Other disbursements, including any disbursements to nonfederal candidate committees;
(xiii) Total disbursements;
(xiv) Total Federal disbursements.
(2) *Itemization of disbursements.* Each report shall disclose the full name and address of each person in each of the following categories, as well as the information required by each category. For each disbursement governed by paragraphs (c)(2)(i) or (x) of this section, the report shall disclose this information for each vendor or other person to whom a disbursement is made directly by the committee, and shall contain a memo entry for each vendor or other person to whom a disbursement is made by an agent of the committee.
(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of the operating expenditure;
(A) As used in paragraph (c)(2) of this section, purpose means a brief statement or description of why the disbursement was made.
(B) Examples of statements or descriptions which adequately describe the purpose of a disbursement include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of paragraph (c)(2) of this section for reporting the purpose of an expenditure.
(ii) Each affiliated political committee to which a transfer is made by the reporting committee during the reporting period and, where the

reporting committee is a political party committee, each transfer of funds by the reporting committee to another party committee of the same party regardless of whether the committees are affiliated, together with the date and amount of the transfer;

(iii) Each political committee, which has received a contribution from the reporting committee during the reporting period, together with the date and amount of the contribution and, for contributions to authorized committees, the candidate's name, the election (e.g. primary or general) and office sought (including State or Congressional district, where applicable);

(iv) (A) Each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of the independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether the independent expenditure is in support of, or in opposition to, a particular candidate, as well as the name of the candidate, the election and office sought by the candidate (including State and Congressional district, where applicable), and a certification, under penalty of perjury, as to whether the independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or its agent;

(C) The information required by paragraph (c)(2)(iv)(A) and (B) of this section shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

(v) Each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR 110.7 (2 U.S.C. 441a(d)), together with the date, amount, and purpose of the expenditure as well as the name of, and the election and office sought by (including State and Congressional district, where applicable), the candidate on whose behalf the expenditure is made;

(vi) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of repayment;

(A) For each loan repayment, the committee shall either report the principal and the interest as separate disbursements, or, it shall report the sum of these as a single disbursement. If the committee applies the former method, the principal shall be reported on Schedules B and C as a loan repayment and the interest shall be reported on Schedule B as an operating expenditure. If the committee applies the latter method, the sum of the principal and the interest shall be reported on Schedule B as a loan repayment and only the principal shall be reported on Schedule C;

(B) The committee shall use one reporting method for the duration of a loan;

(vii) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of the loan, and for any authorized committee that has received a loan, the candidate's name, the election and office sought (including State or Congressional district, where applicable);

(viii) Each person, other than a political committee, who receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(i) of this section, together with the date and amount of the refund;

(ix) Each political committee which receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(ii) of this section, together with the date and amount of the refund; and

(x) Each person, including nonfederal candidate committees, who has received any disbursement during the reporting period not otherwise disclosed under paragraph (c)(2) of this section, to whom the aggregate amount or value of disbursements made by the reporting committee exceeds $200 within the calendar year, together with the date, amount, and purpose of the disbursement(s).

(d) *Summary of contributions and operating expenditures.* Each report filed under this section shall disclose for both the reporting period and the calendar year:

(1)(i) The total contributions to the reporting committee;

(ii) The total of contribution refunds;

(iii) The net contributions (subtract total of contribution refunds from total contributions);

(2)(i) The reporting committee's total Federal operating expenditures;

(ii) The total offsets to operating expenditures; and

(iii) The net Federal operating expenditures (subtract total offsets from total Federal operating expenditures).

(e) *Reporting debts and obligations.* Each report filed under this section shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Where these debts and obligations are settled for less than their reported amount or value, each report filed under this section shall contain a statement as to the circumstances and conditions under which the debts or obligations were extinguished and the amount paid. See 11 CFR 116.7.

(1) In addition, when a committee obtains a loan or a line of credit from a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on Schedule C–1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan or line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or other sources of repayment described in 11 CFR 100.7(b)(11)(i) (A) and (B) and 100.8(b)(12)(i) (A) and (B); and

(v) A certification from the lending institution that the borrower's responses to paragraphs (e)(1) (i) through (iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(2) The committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C–1.

(3) The committee shall file with the next due report a Schedule C–1 each

time a loan or a line of credit is restructured to change the terms of the repayment.

(4) The committee shall report a receipt of funds in the next due report, on Schedule A, each time it makes a draw on a line of credit.

(f) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a committee may submit up to ten (10) pseudonyms on each report filed under this section.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed on line 11(a)(ii) of the Detailed Summary page, ''Contributions from Individuals/Persons, Unitemized''. Thus the committee will, for this purpose only, be overstating the amount of itemized contributions received and understating the amount of unitemized contributions received.

(4) No committee which files reports under this section shall attribute more than $5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of the pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Secretary of the Senate or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Secretary of the Senate or to any Secretary of State or equivalent State officer.

(6) A committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(g) *Building funds.* Gifts, subscriptions, loans, advances, deposits of money or anything of value made to defray costs of construction or purchase of office facilities received by a political committee in accordance with 11 CFR 100.7(b)(12) shall be reported as a memo entry on Schedule A. National party committees shall report building fund receipts and disbursements in accordance with 11 CFR 104.8(f) and 104.9(d).

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b) (13) and (14) during the reporting period shall report the services in accordance with paragraphs (i) (1) or (2) of this section.

(1) If the regular employer of person(s) who provide the services has paid in excess of $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the amounts paid for the services by the regular employer together with the date(s) the services were performed.

(2) For each regular employer who has paid no more than $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the sum of the amount(s) paid by each regular employer of person(s) who provide the services. The committee shall preserve all records of these services, for the period required by 11 CFR 102.9(c), to reflect the name of each regular employer, the amounts paid by each, and the date(s) the services were performed.

(i) *Cumulative reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. See also 11 CFR 102.8(c).

(k) *Amending reports.* A committee shall change or correct a report previously filed under this section, no later than the next due report, after the committee discovers an error, omission or change in the information submitted in the report. A committee may submit only those pages that have been changed or corrected, or it may refile the entire, amended report. The committee shall identify the changes, either in a cover letter or on the amended pages or report, by specifying the lines on the Schedule(s) or Form(s) that have been amended.

(l) *Credit card payments.* (1) Where a committee has paid, by credit card, any disbursement(s) subject to paragraphs (c) (1) and (2) of this section, the committee shall report these disbursements in accordance with this paragraph. For the purposes of this section, a credit card represents a credit account with a depository institution (see 11 CFR 103.2) or other corporation that is not a depository institution. A credit account may permit the committee to make a partial payment of each monthly balance or may require the committee to pay each monthly balance in full.

(2) The reporting committee shall itemize on Schedule B each payment to a credit card issuer by specifying the depository institution or other corporation to which payment was made, the date and amount of payment. Where the committee has made a partial payment of a monthly balance, the committee shall report a memo entry for the outstanding credit balance on Schedule B and report the outstanding balance as a debt to the extent required by 11 CFR 104.11(b).

(3) Any disbursement reflected on a monthly account statement for a credit card, that otherwise is required to be itemized by paragraph (c)(2) of this section, shall be reported as a memo entry on Schedule B in addition to the information required under paragraph (l)(2) of this section.

5. New § 104.17 would be added to read as follows:

§ 104.17 Contents of reports for authorized committees (2 U.S.C. 434(b), 439a).

(a) *Scope.* The requirements of this section apply to all authorized committees of candidates for Federal office. All other political committees shall meet the requirements for reporting receipts and disbursements set forth at 11 CFR 104.3.

(b) *Reporting of Receipts.* (1) *General.* Each report filed under this section shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (b)(2) through (4) of this section. The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not received during the current reporting period.

(2) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings associations and other depository institutions; certificates of deposit, treasury bills and any other committee investments valued at cost. Non-liquid assets on hand, if received as in-kind contributions, should be reported in accordance with 11 CFR 104.13.

(3) *Categories of receipts.* Each report shall disclose the total amount of receipts received during the reporting period and during the calendar year for each of the following categories:

(i) Contributions from persons other than political committees, including individuals and committees that do not qualify as political committees under the Act, but excluding the candidate

who authorized the reporting committee;

(A) Itemized contributions;

(B) Unitemized contributions;

(ii) Contributions from political committees;

(A) Party committees, except that expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)) by a party committee shall not be reported as contributions by the authorized committee on whose behalf they are made;

(B) Authorized committees of other candidates;

(C) Unauthorized committees other than party committees;

(iii) Contributions from the candidate, excluding loans which are reported under paragraph (b)(3)(vi)(A) of this section;

(iv) Total contributions (add contributions from persons, political committees and the candidate);

(v) Transfers from other committee(s) authorized by the candidate, regardless of amount;

(vi) Loans received;

(A) Loans made, guaranteed, or endorsed by the candidate to his or her authorized committee;

(B) All other loans to the committee;

(C) Total loans;

(vii) For authorized committee(s) of Presidential candidates, Federal funds received under chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code);

(viii) Offsets to operating expenditures, such as vendor refunds and rebates;

(ix) Refunds of contributions made by the reporting committee to committees authorized by other candidates for Federal office and to other political committees;

(x) Other receipts (such as dividends, interest, loan repayments and reimbursements received pursuant to 11 CFR 113.1(g));

(xi) The total sum of all receipts.

(4) *Itemization of receipts.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for the contributor in each of the following categories shall be reported.

(i) Each person other than a political committee, including individuals and committees that do not qualify as political committees under the Act but excluding the candidate who authorized the reporting committee, who makes a contribution to the committee during the reporting period, whose contribution(s) aggregate in excess of $200 per calendar year, together with the date of receipt, the amount of the contribution(s) and the election(s) (e.g. primary or general) for which each contribution is made, except that the committee may elect to report this information for contributors of lesser amount(s) on a separate schedule;

(ii) All political committees which make contributions to the reporting committee during the reporting period, together with the date of receipt, amount of the contribution and the election(s) for which each contribution is made;

(iii) Each contribution by the candidate to the reporting committee during the reporting period, together with the date of receipt and amount of the contribution;

(iv) Each committee authorized by the candidate which transfers funds to the reporting committee during the reporting period, together with the date and amount of the transfer;

(v) Each person who makes a loan during the reporting period to the reporting committee or to the candidate acting as an agent of the committee, together with the identification of any endorser or guarantor of the loan, the date the loan was made, the amount or value of the loan, and, where applicable, the election(s) for which the loan was made;

(vi) Each person who makes a loan repayment to the reporting committee during the reporting period, together with the date and amount of the repayment;

(vii) Each person who provides an offset to operating expenditures, such as vendor rebates and refunds, to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the offset;

(viii) Each authorized committee for other candidates for Federal office and any other political committee which, during the reporting period, refunds a contribution made by the reporting committee, together with the date of receipt and amount of the refund; and

(ix) Each person who provides any dividend, interest, reimbursement received pursuant to 11 CFR 113.1(g) or other receipt to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the receipt.

(c) *Reporting of Disbursements.* Each report filed under this section shall disclose the total amount of disbursements for the reporting period and for the calendar year and shall disclose the information set forth at paragraph (c)(1) and (2) of this section. If a committee has paid any disbursements by credit card, the committee shall report these in accordance with paragraph (l) of this section. The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not disbursed during the current reporting period.

(1) *Categories of disbursements.* Each report shall disclose the total amount of disbursements made during the reporting period and during the calendar year in each of the following categories:

(i) Operating expenditures;

(A) Itemized expenditures;

(B) Unitemized expenditures;

(C) Total operating expenditures;

(ii) Transfers to other committees authorized by the candidate;

(iii) Loan repayments made;

(A) Repayment of loans made by or guaranteed by the candidate;

(B) Repayment of all other loans;

(C) Total loan repayments;

(iv) For an authorized committee of a candidate for the office of President, disbursements not subject to the limitations of 11 CFR 110.8 (2 U.S.C. 441a(b));

(v) Refunds of contributions to persons, including individuals but excluding the candidate and political committees;

(A) Itemized refunds;

(B) Unitemized refunds;

(vi) Refunds of contributions to political committees;

(A) Party committees;

(B) Authorized committees for other candidates for Federal office;

(C) Unauthorized committees other than party committees;

(vii) Total contribution refunds (add contribution refunds to persons and contribution refunds to political committees);

(viii) Contributions to committees authorized by other candidates for Federal office and to other political committees;

(ix) Other disbursements, including any disbursements to nonfederal candidate committees;

(x) Total disbursements.

(2) *Itemization of disbursements.* Each report shall disclose the full name and address of each person in each of the following categories, as well as the information required by each category, whether the disbursement was made by the reporting committee or the candidate acting as its agent. For each disbursement governed by paragraphs (c)(2)(i) or (viii) of this section, the report shall disclose this information for each vendor or other person to whom a disbursement is made directly by the committee, and shall contain a memo entry for each vendor or other person to whom a disbursement is made by an agent of the committee.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of the operating expenditure;

(A) As used in paragraph (c)(2) of this section, purpose means a brief statement or description of why the disbursement was made.

(B) Examples of statements or descriptions which adequately describe the purpose of a disbursement include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of paragraph (c)(2) of this section for reporting the purpose of an expenditure.

(C) In addition to reporting the purpose described in paragraph (c)(2)(i)(A) and (B) of this section, whenever the reporting committee itemizes a disbursement that is partially or entirely a personal use for which reimbursement is required under 11 CFR 113.1(g)(1)(ii)(C) or (D), it shall provide a brief explanation of the activity for which reimbursement is required.

(ii) Each committee authorized by the same candidate to which a transfer is made by the reporting committee during the reporting period, together with the date and amount of the transfer;

(iii) Each authorized committee for other candidates for Federal office and any other political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of the contribution and, for any authorized committee that has received a contribution, the candidate's name, the election (e.g. primary or general) and office sought (including State or Congressional district, where applicable);

(iv) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of the loan repayment;

(A) All loan repayments from the reporting committee;

(B) All loan repayments from the candidate, if the proceeds of the loan were used in connection with the candidate's campaign;

(C) For each loan repayment, the committee shall either report the principal and the interest as separate disbursements, or, it shall report the sum of these as a single disbursement. If the committee applies the former method, the principal shall be reported on Schedules B and C as a loan repayment and the interest shall be reported on Schedule B as an operating expenditure. If the committee applies the latter method, the sum of the principal and the interest shall be reported on Schedule B as a loan repayment and only the principal shall be reported on Schedule C;

(D) The committee shall use one reporting method for the duration of a loan;

(v) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of the loan, and for any authorized committee that has received a loan, the candidate's name, the election and office sought (including State or Congressional district, where applicable);

(vi) Each person who receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(i) of this section, together with the date and amount of the refund;

(vii) Each political committee which receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(ii) of this section, together with the date and amount of the refund; and

(viii) Each person, including nonfederal candidate committees, who has received any disbursement during the reporting period not otherwise disclosed under paragraph (c)(2) of this section, to whom the aggregate amount or value of disbursements made by the reporting committee exceeds $200 within the calendar year, together with the date, amount, and purpose of the disbursement(s).

(d) *Summary of contributions and operating expenditures.* Each report filed under this section shall disclose for both the reporting period and the calendar year:

(1)(i) The total contributions to the reporting committee;

(ii) The total of contribution refunds;

(iii) The net contributions (subtract total of contribution refunds from total contributions);

(2) (i) The reporting committee's total Federal operating expenditures;

(ii) The total offsets to operating expenditures; and

(iii) The net Federal operating expenditures (subtract total offsets from total Federal operating expenditures).

(e) *Reporting debts and obligations.* (1) Each report filed under this section shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Where these debts and obligations are settled for less than their reported amount or value, each report filed under this section shall contain a statement as to the circumstances and conditions under which the debts or obligations were extinguished and the amount paid. See 11 CFR 116.7.

(2) A loan obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if the loan is outstanding at the time the individual becomes a candidate.

(3) When a candidate or a committee obtains a loan or a line of credit from a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on Schedule C–1 or C-P–1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan or line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or other sources of repayment described in 11 CFR 100.7(b)(11)(i) (A) and (B) and 100.8(b)(12)(i) (A) and (B); and

(v) A certification from the lending institution that the borrower's responses to paragraphs (e)(1)(i) through (iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(4) The committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C–1 or C–P–1.

(5) The committee shall file with the next due report a Schedule C–1 or C-P–1 each time a loan or a line of credit is restructured to change the terms of the repayment.

(6) The committee shall report a receipt of funds in the next due report, on Schedule A, each time it makes a draw on a line of credit.

(f) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a committee may submit up to ten (10) pseudonyms on each report filed under this section.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed on line 11(a)(ii) of the Detailed Summary page, ''Contributions from Individuals/Persons, Unitemized''. Thus the committee will, for this purpose only, be overstating the amount received and understating the amount of unitemized contributions received.

(4) No committee which files reports under this section shall attribute more than $5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of the pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Secretary of the Senate or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Secretary of the Senate or to any Secretary of State or equivalent State officer.

(6) A committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(g) *Consolidated reports.* Each principal campaign committee shall consolidate in each report those reports required to be filed with it. These consolidated reports shall include reports submitted to it by any authorized committees and the principal campaign committee's own report. The consolidation shall be made on FEC Form 3–Z and shall be submitted with the reports of the principal campaign committee and with the reports, or applicable portions thereof, of the committees shown on the consolidation.

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b)(14) during the reporting period shall report the services in accordance with paragraphs (i) (1) or (2) of this section.

(1) If the regular employer of person(s) who provide the services has paid in excess of $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the amounts paid for the services by the regular employer together with the date(s) the services were performed.

(2) For each regular employer who has paid no more than $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the sum of the amount(s) paid by each regular employer of person(s) who provide the services. The committee shall preserve all records of these services, for the period required by 11 CFR 102.9(c), to reflect the name of each regular employer, the amounts paid by each, and the date(s) the services were performed.

(i) *Cumulative reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. *See* also 11 CFR 102.8(c).

(k) *Amending reports.* A committee shall change or correct a report previously filed under this section, no later than the next due report, after it discovers an error, omission or change in the information submitted in the report. A committee may submit only those pages that have been changed or corrected, or it may refile the entire, amended report. The committee shall identify the changes, either in a cover letter or on the amended pages or report, by specifying the lines on the Schedule(s) or Form(s) that have been amended.

(l) *Credit card payments.* (1) Where a committee has paid, by credit card, any disbursement(s) subject to paragraphs (c) (1) and (2) of this section, the committee shall report these disbursements in accordance with this paragraph. For the purposes of this section, a credit card represents a credit account with a depository institution (see 11 CFR 103.2) or other corporation that is not a depository institution. A credit account may permit the committee to make a partial payment of each monthly balance or may require the committee to pay each monthly balance in full.

(2) The reporting committee shall itemize on Schedule B each payment to a credit card issuer by specifying the depository institution or other corporation to which payment was made, the date and amount of payment. Where the committee has made a partial payment of a monthly balance, the committee shall report a memo entry for the outstanding credit balance on Schedule B and report the outstanding balance as a debt to the extent required by 11 CFR 104.11(b).

(3) Any disbursement reflected on a monthly account statement for a credit card, that otherwise is required to be itemized by paragraph (c)(2) of this section, shall be reported section, shall be reported as a memo entry on Schedule B in addition to the information required under paragraph (l)(2) of this section.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

6. The authority citation for part 108 would continue to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

7. Section 108.1 would be amended by redesignating the text as paragraph (a), revising the first sentence of newly designated paragraph (a), and adding new paragraph (b) to read as follows:

§ 108.1 Filing requirements (2 U.S.C. 439(a)(1)).

(a) Except as provided in paragraph (b)(1) of this section, a copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State officer who is charged by State law with maintaining state election campaign reports. * * *

(b)(1) The filing requirements and duties of State officers under 11 CFR part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission.

(2) The provisions of paragraph (b)(1) of this section shall not apply to reports filed by candidates, and the authorized

committees of candidates, for nomination for election, or election, to the office of Senator. See 11 CFR 108.3(a)(1).

8. Section 108.2 would be amended by revising the first sentence to read as follows:

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).

Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed under the Act (including 11 CFR part 104) by a Presidential or Vice Presidential candidate's principal campaign committee, or under 11 CFR 104.4 or part 109 by any other person making independent expenditures, in connection with a candidate seeking nomination for election to the office of President or Vice-President, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. * * *

9. Section 108.3 would be revised to read as follows:

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).

(a)(1) A copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and the authorized committees of candidates, for nomination for election, or election, to the office of Senator, shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(2) Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed by any unauthorized committee under 11 CFR part 104, or by any other person under 11 CFR part 109, in connection with a campaign for nomination for election, or election to, the office of Senator, shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(b) Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and authorized committees of candidates, for nomination for election, or election, to the office of Representative in, Delegate or Resident Commissioner to the Congress, or by unauthorized committees, or by any other person under 11 CFR part 109, in connection with these campaigns shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(c) Unauthorized committees that file reports pursuant to paragraph (b) of this section are required to file, and the Secretary of State is required to retain, only that portion of the report applicable to candidates seeking election in that State.

10. Section 108.4 would be revised to read as follows:

§ 108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).

Except as provided in 11 CFR 108.1(b)(1), any unauthorized committee, which makes contributions in connection with a Presidential election and which is required to file a report(s) and statement(s) under the Act, shall file a copy of the report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

11. Section 108.6 would be amended by revising the introductory text to read as follows:

§ 108.6 Duties of State officers (2 U.S.C. 439(b)).

Except as provided in 11 CFR 108.1(b)(1), the Secretary of State, or the equivalent State officer, shall carry out the duties set forth in 11 CFR 108.6(a) through (d):

* * * * *

12. Section 108.8 would be revised to read as follows:

§ 108.8 Exemption for the District of Columbia.

Any copy of a report required to be filed with the equivalent officer in the District of Columbia under 11 CFR part 108 shall be deemed to be filed if the original has been filed with the Secretary or the Commission, as appropriate.

Dated: September 22, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–25477 Filed 9–25–97; 8:45 am]

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federal register

Friday
September 26, 1997

Part V

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for the Section 8 Housing Assistance Payments Program, Fiscal Year 1998; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4232–N–02]

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 1998

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fiscal Year (FY) 1998 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use.

Today's notice provides final FY 1998 FMRs for all areas. It includes increased FMRs for 16 areas that submitted public comments and for 3 areas as a result of HUD-contracted Random Digit Dialing (RDD) surveys conducted through August, 1997.

Today's notice also makes effective FMR reductions for 20 areas that were proposed for reduction in the April 30, 1997 notice (62 FR 23552), based on the results of recent RDD and American Housing Surveys (AHSs).

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Alan Fox, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–9426, Extension 328 (e-mail: alan__fox@hud.gov). Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the ''800'' TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by FMRs established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Method Used To Develop FMRs

FMR Standard

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) The Bureau of the Census' American Housing Surveys (AHSs), which are used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 99 metropolitan FMR areas. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

State Minimum FMRs

In response to public concern that FMRs in rural areas were too low to operate the program successfully, HUD implemented a minimum FMR policy starting with the FY 1996 FMRs. FMRs are now established at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties, subject to a ceiling rent cap. The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum.

Public Comments

In response to the April 30, 1997 proposed FMRs, HUD received public comments covering 41 FMR areas. Rental housing survey information was provided for 26 of those FMR areas. All of the survey information submitted was evaluated and, based on that review, the FMRs for 16 areas are being revised. The information submitted for the other FMR areas was not considered sufficient to provide a basis for revising the FMRs. An RDD survey sponsored by local Public Housing Agencies (PHAs) for the Los Angeles FMR area found results that were the same as what had been proposed based on the HUD RDD survey.

The 16 FMR areas with approved FMR revisions are as follows: Orange County and Stockton-Lodi, CA; Lafayette, LA; Addison, Bennington, Chittenden, Lamoille, Orange, Rutland, Washington, Windham, and Windsor Counties, VT; Burlington, VT; Berkeley, Morgan, and Jefferson Counties, WV.

PHAs and other interested parties should be aware that FMR comments received too late for adjusting the current year's final FMRs will be held for use in the following year. In such cases HUD will trend the survey results to the date of the FMR estimate. If the PHA is concerned that rents are changing rapidly, surveys should be timed to be received as close as possible to HUD's deadline for public comments.

AHS and RDD Surveys

This notice makes effective the FMRs for 20 areas proposed with reductions based on recent RDD or AHS surveys. One of those areas, the Stockton-Lodi, CA MSA, submitted information that

caused HUD to reduce the FMRs less than had been proposed. For the other areas, the lower proposed FMRs are, by this notice, being made final. FMR areas with reductions based on RDD surveys are:

1996 RDD:
New Haven-Meriden, CT
Des Moines, IA
Pittsfield, MA
Worcester, MA-CT

1997 RDD:
Bakersfield, CA
Los Angeles-Long Beach, CA
Stockton-Lodi, CA
Daytona Beach, FL
Fort Myers-Cape Coral, FL
Lakeland-Winter Haven, FL
Melbourne-Titusville-Palm Bay, FL
Brockton, MA
Lawrence, MA-NH
St Cloud, MN
Salem, OR
Harrisburg-Lebanon-Carlisle, PA
Spokane, WA
Tacoma, WA

The areas with reductions based on AHS surveys are:

Fort Lauderdale, FL
Miami, FL.

HUD is increasing FMRs for the following 3 areas, based on RDDs that were completed after the date of the proposed FMR notice:

Detroit, MI
Greensboro—Winston-Salem—High Point, NC
Phoenix, AZ

Technical Correction: Des Moines, IA

The final FMRs for the Des Moines, IA MSA have been revised slightly upward ($4 for 2-bedroom units) to correct an error that resulted from applying the wrong inflation factor to the June, 1996 RDD survey. The corrected FMRs are listed in Schedule B.

FMR Area Definition Changes

In the April 30, 1997 publication of the proposed FY 1998 FMRs, HUD announced that it had reevaluated the definition of the Atlanta FMR area and proposed to add back Carroll, Pickens, and Walton Counties, which because of recent growth are now considered part of the housing market area. In addition, HUD announced that it was accepting the Office of Management and Budget's (OMB) expanded definition of the Jackson, TN metropolitan area as the revised FMR area. No comments were received concerning these proposed changes which, therefore, are being made effective with this publication.

Manufactured Home Space Surveys

HUD received no public comments concerning the manufactured home space FMRs.

FMRs for the rental of manufactured home spaces are 30 percent of the applicable Section 8 existing housing program FMR for two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where the 30 percent FMRs are thought to be inadequate. In order to be accepted as a basis for revising the FMRs, such comments must contain statistically valid survey data that show the 40th percentile space rent (excluding the cost of utilities) for the entire FMR area. However, the sampling requirements for manufactured home space rent surveys are easier to meet than for regular FMR comments, and interested parties should contact HUD for suggestions. HUD uses the same FMR area definitions for manufactured home space rental as for the Section 8 existing housing FMRs shown in Schedule B. Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the Section 8 existing housing program FMRs.

HUD Rental Housing Survey Guides

HUD recommends the use of professionally-conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$12,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if the actual two-bedroom FMR rent standard is significantly different than that proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of about $5,000.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped county surveys must be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on its relationship to the combined rent of the group of FMR areas.

PHAs that plan to use the RDD survey technique may obtain a copy of the appropriate survey guide by calling HUD USER on 1–800–245–2691. Larger PHAs should request ''Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments.'' Smaller PHAs should obtain ''Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments.'' These guides are also available on the Internet at http://www.huduser.org/publications/ publicassist/ assisted/rddlrge3.zip and .../rddsmall.exe, respectively.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the small PHA survey guide. Other survey methodologies are acceptable as long as they provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means of verification for determining whether the sample is representative of the FMR area's rental housing stock. All survey results must be fully documented.

The cost of an RDD survey may vary, depending on the characteristics of the telephone system used in the FMR area. RDDs (and simplified telephone surveys) of some non-metropolitan areas have been unusually expensive because of telephone system characteristics. A PHA or PHA contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations HUD is prepared to relax normal sample size requirements.

FMRs for Federal Disaster Areas

Under the authority granted in 24 CFR part 899, the Secretary of HUD finds good cause to waive and hereby waives the regulatory requirements that govern requests for geographic area exception rents for areas that are declared disaster areas by the Federal Emergency Management Agency (FEMA). HUD is prepared to grant disaster-related exceptions up to 10 percent above the applicable FMRs for those areas. HUD field offices are authorized to approve such exceptions for (1) single-county FMR areas and for individual county parts of multi-county FMR areas that qualify as disaster areas under the Robert T. Stafford Disaster Relief and

Emergency Assistance Act; if (2) the PHA certifies that damage to the rental housing stock as a result of the disaster is so substantial that it has increased the prevailing rent levels in the affected area. Such exception rents must be requested in writing by the responsible PHAs. Exception rents approved by HUD during FY 1998 will remain in effect until superseded by the publication of the final FY 2000 FMRs.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 Program.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: September 16, 1997.

Andrew M. Cuomo,

Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B incorporate OMB's most current definitions of metropolitan areas, with the exceptions discussed in paragraph (b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the ''Metropolitan FMR Areas'' listing:

Metropolitan Area and Counties Deleted

Chicago, IL
DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN
Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX
Henderson County
Flagstaff, AZ–UT
Kane County, UT
New Orleans, LA
St. James Parish
Washington, DC–MD–VA–WV
Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren Counties in Virginia

c. *Nonmetropolitan Area FMRs*—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands and the Pacific Islands.

d. *Virginia Independent Cities*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan County. The full definitions of these areas, including the independent cities, are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Clifton Forge and Covington
Augusta	Staunton and Waynesboro
Carroll	Galax
Frederick	Winchester
Greensville	Emporia
Henry	Martinsville
Montgomery	Radford
Rockbridge	Buena Vista and Lexington
Rockingham	Harrisonburg
Southhampton	Franklin
Wise	Norton

e. *FMRs for Manufactured Home Spaces*—FMRs for Section 8 manufactured home spaces are established at 30 percent of the two-bedroom Section 8 existing housing program FMRs, with the exception of the areas listed in Schedule D whose FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to estimate the Section 8 existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the Section 8 existing FMRs.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

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BILLING CODE 4210–32–P

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	253	299	374	522	591	Calhoun
Birmingham, AL MSA	359	405	472	640	710	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	341	380	455	595	645	Russell
Decatur, AL MSA	335	339	428	553	661	Lawrence, Morgan
Dothan, AL MSA	304	311	386	532	539	Dale, Houston
Florence, AL MSA	284	327	421	525	588	Colbert, Lauderdale
Gadsden, AL MSA	253	309	357	463	570	Etowah
Huntsville, AL MSA	352	413	508	677	806	Limestone, Madison
Mobile, AL MSA	370	413	473	637	747	Baldwin, Mobile
Montgomery, AL MSA	385	412	486	662	797	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	332	356	473	650	688	Tuscaloosa

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	242	287	343	444	509
Bullock	242	287	343	444	509
Chambers	242	287	343	444	510
Chilton	250	287	343	444	509
Clarke	242	287	343	444	509
Cleburne	242	287	343	444	509
Conecuh	242	287	343	444	509
Covington	242	287	343	444	509
Cullman	242	287	343	455	553
Dekalb	242	287	343	444	509
Fayette	242	287	343	444	509
Geneva	242	287	343	444	509
Hale	242	287	343	444	509
Jackson	261	287	343	444	545
Lee	255	356	457	594	751
Macon	264	296	395	495	554
Marion	242	287	343	444	509
Monroe	242	287	343	444	509
Pickens	242	287	343	444	509
Randolph	242	287	343	444	509
Talladega	242	287	343	444	509
Walker	242	298	351	454	578
Wilcox	242	287	343	444	509

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bibb	242	287	343	462	554
Butler	242	287	343	444	509
Cherokee	242	287	343	444	509
Choctaw	242	287	343	444	509
Clay	242	287	343	444	509
Coffee	242	340	441	614	689
Coosa	242	287	343	444	509
Crenshaw	242	287	343	444	509
Dallas	242	287	343	444	509
Escambia	242	287	343	444	509
Franklin	242	287	343	444	509
Greene	242	287	343	444	509
Henry	242	287	343	444	509
Lamar	242	287	343	444	509
Lowndes	242	287	343	444	509
Marengo	242	287	343	444	509
Marshall	277	287	349	484	573
Perry	242	287	343	444	509
Pike	247	287	343	444	517
Sumter	242	287	343	444	509
Tallapoosa	243	287	343	444	509
Washington	242	287	343	444	509
Winston	242	287	343	444	509

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

A L A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	487	575	763	1061	1253	Anchorage

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	512	577	651	812	1064	Aleutian West	439	496	556	698	781
Bethel	661	827	1047	1311	1467	Bristol Bay	531	612	688	957	1041
Dillingham	638	649	864	1081	1210	Fairbanks North Star	403	548	719	989	1166
Haines	476	590	672	914	941	Juneau	711	822	1046	1392	1447
Kenai Peninsula	433	552	665	924	1091	Ketchikan Gateway	523	639	856	1192	1254
Kodiak Island	681	748	971	1215	1576	Lake & Peninsula	409	662	744	929	1042
Matanuska-Susitna	457	619	697	946	1117	Nome	673	833	935	1301	1468
North Slope	764	783	967	1346	1568	Northwest Arctic	809	911	1022	1423	1678
Pr.Wales-Outer Ketchikan	357	568	653	906	958	Sitka	563	669	750	1044	1232
Skagway-Yakutat-Angoon	437	445	576	721	809	Southeast Fairbanks	449	470	568	710	797
Valdez-Cordova	535	655	727	929	1106	Wade Hampton	382	576	649	811	909
Wrangell-Petersburg	389	574	698	888	975	Yukon-Koyukuk	510	575	648	810	938

A R I Z O N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ	415	450	583	783	940	Coconino
Las Vegas, NV-AZ MSA	482	572	681	948	1119	Mohave
Phoenix-Mesa, AZ MSA	410	496	623	866	1021	Maricopa, Pinal
Tucson, AZ MSA	359	430	572	796	939	Pima
Yuma, AZ MSA	359	415	553	768	774	Yuma

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Apache	355	373	474	619	735	Cochise	355	373	474	619	735
Gila	355	373	474	619	735	Graham	355	373	474	619	735
Greenlee	355	373	474	619	735	La Paz	355	373	474	619	735
Navajo	355	373	474	619	735	Santa Cruz	355	393	487	619	735
Yavapai	377	393	524	731	805						

A R K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	301	378	497	672	696	Benton, Washington
Fort Smith, AR-OK MSA	298	302	397	531	557	Crawford, Sebastian
Jonesboro, AR MSA	305	331	390	538	568	Craighead
Little Rock-North Little Rock, AR MSA	371	411	489	676	789	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	340	395	465	646	679	Crittenden

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	283	336	442	558	725	Jefferson
Texarkana, TX-Texarkana, AR MSA	302	369	450	594	630	Miller

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Arkansas	257	278	356	487	528	Ashley	234	278	356	472	559
Baxter	234	298	396	509	620	Boone	277	282	374	521	615
Bradley	234	278	356	472	528	Calhoun	234	278	356	472	528
Carroll	275	301	356	472	564	Chicot	234	278	356	472	528
Clark	257	278	361	472	570	Clay	234	278	356	472	528
Cleburne	265	278	356	472	535	Cleveland	234	278	356	472	528
Columbia	234	278	356	472	528	Conway	234	289	387	483	542
Cross	243	308	356	479	565	Dallas	234	278	356	472	528
Desha	234	278	356	472	528	Drew	234	303	405	560	569
Franklin	245	278	356	472	528	Fulton	242	278	356	472	528
Garland	234	298	399	557	657	Grant	243	289	356	472	533
Greene	251	278	356	472	528	Hempstead	234	278	356	472	528
Hot Spring	234	278	356	472	528	Howard	234	278	356	472	528
Independence	246	285	356	472	528	Izard	234	278	356	472	528
Jackson	242	278	356	472	528	Johnson	234	278	356	472	528
Lafayette	245	278	356	472	528	Lawrence	234	278	356	472	528
Lee	258	278	356	472	528	Lincoln	253	278	362	484	528
Little River	234	278	362	502	592	Logan	245	278	356	472	528
Madison	267	278	362	472	528	Marion	234	278	356	472	528
Mississippi	266	289	387	510	572	Monroe	238	278	356	472	528
Montgomery	234	278	356	472	528	Nevada	234	278	356	488	528
Newton	234	278	356	472	528	Ouachita	273	278	356	491	580
Perry	234	278	356	472	528	Phillips	234	278	356	472	528
Pike	234	278	356	472	528	Poinsett	234	278	356	472	528
Polk	234	278	356	472	528	Pope	234	306	387	537	619
Prairie	234	278	356	472	528	Randolph	234	278	356	472	528
St. Francis	234	284	356	482	567	Scott	234	278	356	472	528
Searcy	234	278	356	472	528	Sevier	256	278	356	472	528
Sharp	234	278	356	472	528	Stone	234	278	356	472	528
Union	293	310	372	499	611	Van Buren	234	278	356	472	583
White	234	278	356	488	528	Woodruff	234	278	356	472	528
Yell	243	278	356	472	528						

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	354	398	499	693	767	Kern
Chico-Paradise, CA MSA	324	416	554	759	908	Butte
Fresno, CA MSA	399	447	533	741	855	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	486	583	737	995	1187	Los Angeles
Merced, CA MSA	386	435	528	730	862	Merced
Modesto, CA MSA	427	460	562	783	922	Stanislaus
Oakland, CA PMSA	535	647	812	1113	1330	Alameda, Contra Costa
Orange County, CA PMSA	635	693	858	1193	1328	Orange
Redding, CA MSA	367	408	510	709	835	Shasta
Riverside-San Bernardino, CA PMSA	432	481	587	816	964	Riverside, San Bernardino
Sacramento, CA PMSA	459	518	648	899	1059	El Dorado, Placer, Sacramento
Salinas, CA MSA	520	608	733	1020	1070	Monterey
San Diego, CA MSA	483	552	691	960	1133	San Diego
San Francisco, CA PMSA	603	781	987	1354	1432	Marin, San Francisco, San Mateo
San Jose, CA PMSA	700	799	987	1353	1519	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	498	563	714	991	1171	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	605	672	852	1186	1338	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	619	737	985	1369	1604	Santa Cruz
Santa Rosa, CA PMSA	532	604	782	1088	1284	Sonoma
Stockton-Lodi, CA MSA	401	453	581	808	954	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	512	582	711	986	1165	Napa, Solano
Ventura, CA PMSA	537	617	781	1039	1209	Ventura
Visalia-Tulare-Porterville, CA MSA	359	381	497	693	792	Tulare
Yolo, CA PMSA	462	527	652	904	1069	Yolo
Yuba City, CA MSA	319	372	479	668	772	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	301	451	510	709	764
Calaveras	364	421	561	780	920
Del Norte	308	422	561	781	922
Humboldt	310	430	564	786	930
Inyo	311	421	540	708	764
Lake	339	431	575	725	943
Mariposa	325	413	531	696	821
Modoc	329	368	474	661	764
Nevada	377	515	686	954	1105
San Benito	451	531	665	927	1085
Siskiyou	315	368	474	661	764
Trinity	338	368	474	661	764

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Amador	415	457	611	850	947
Colusa	329	368	474	661	764
Glenn	301	368	474	661	764
Imperial	340	425	523	729	764
Kings	349	405	506	704	830
Lassen	368	373	485	661	764
Mendocino	416	501	616	857	863
Mono	459	551	732	1018	1203
Plumas	332	368	474	661	764
Sierra	301	403	497	690	815
Tehama	314	368	474	661	764
Tuolumne	333	454	606	843	994

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O L O R A D O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	478	573	734	1023	1206	Boulder
Colorado Springs, CO MSA	424	455	607	845	998	El Paso
Denver, CO PMSA	401	478	637	884	1043	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	419	517	639	887	1048	Larimer
Grand Junction, CO MSA	386	400	501	675	803	Mesa
Greeley, CO PMSA	401	443	558	774	916	Weld
Pueblo, CO MSA	406	421	526	708	844	Pueblo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alamosa	374	388	485	654	779
Baca	374	388	485	654	779
Chaffee	374	388	485	654	779
Clear Creek	374	436	494	687	810
Costilla	374	388	485	654	779
Custer	374	388	485	654	779
Dolores	374	388	485	654	779
Elbert	413	458	523	654	858
Garfield	434	466	588	734	962
Grand	444	448	568	711	860
Hinsdale	374	395	485	654	779
Jackson	374	388	485	654	779
Kit Carson	374	388	485	654	779
La Plata	489	540	713	992	1170
Lincoln	374	388	485	654	779
Mineral	374	388	485	654	779
Montezuma	374	388	485	654	779
Morgan	374	388	485	654	779
Ouray	374	388	491	654	794
Phillips	374	388	485	654	779
Prowers	374	388	485	654	779
Rio Grande	374	388	485	654	779
Saguache	374	388	485	654	779
San Miguel	688	994	1092	1365	1761
Summit	482	577	739	1029	1267
Washington	374	388	485	654	779

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Archuleta	447	490	579	781	929
Bent	374	388	485	654	779
Cheyenne	374	388	485	654	779
Conejos	374	388	485	654	779
Crowley	374	388	485	654	779
Delta	374	388	485	654	779
Eagle	503	548	731	1018	1199
Fremont	374	388	485	654	779
Gilpin	374	497	631	834	922
Gunnison	374	388	485	654	779
Huerfano	374	388	485	654	779
Kiowa	374	388	485	654	779
Lake	374	388	485	654	779
Las Animas	374	399	485	654	779
Logan	374	388	485	654	779
Moffat	374	388	485	654	779
Montrose	374	388	491	680	802
Otero	374	388	485	654	779
Park	374	414	539	748	851
Pitkin	561	768	1023	1349	1533
Rio Blanco	374	388	485	654	779
Routt	374	452	598	830	978
San Juan	374	388	485	654	779
Sedgwick	374	388	485	654	779
Teller	374	443	591	821	828
Yuma	374	388	485	654	779

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

C O N N E C T I C U T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	468	609	734	917	1144	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	586	702	876	1156	1332	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	430	535	684	858	1042	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	500	614	760	973	1127	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	486	587	715	895	1023	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	749	877	1070	1434	1584	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	425	575	711	888	994	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	403	488	610	761	853	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	356	575	649	902	1063	Hartland town
Litchfield	413	563	751	938	1067	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	613	694	927	1288	1519	Chester town, Deep River town, Essex town Westbrook town
New London	519	635	721	932	1182	Lyme town, Voluntown town
Tolland	356	575	649	902	908	Union town
Windham	409	501	649	812	1020	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	477	529	602	781	888	Kent
Wilmington-Newark, DE-MD PMSA	425	562	654	889	1073	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	421	447	571	750	800

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	609	692	812	1106	1333	District of Columbia

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	380	444	569	755	801	Flagler, Volusia
Fort Lauderdale, FL PMSA	470	553	684	952	1121	Broward
Fort Myers-Cape Coral, FL MSA	408	470	567	791	826	Lee
Fort Pierce-Port Lucie, FL MSA	453	497	644	838	903	Martin, St. Lucie
Fort Walton Beach, FL MSA	396	432	490	665	784	Okaloosa
Gainesville, FL MSA	396	432	526	720	850	Alachua
Jacksonville, FL MSA	414	463	558	738	820	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	380	416	470	583	636	Polk
Melbourne-Titusville-Palm Bay, FL MSA	380	443	555	743	866	Brevard
Miami, FL PMSA	440	552	688	946	1096	Dade
Naples, FL MSA	424	597	718	998	1113	Collier
Ocala, FL MSA	396	432	490	644	756	Marion
Orlando, FL MSA	491	558	665	874	1066	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	396	432	490	626	671	Bay
Pensacola, FL MSA	396	432	490	656	774	Escambia, Santa Rosa
Punta Gorda, FL MSA	396	454	604	839	990	Charlotte
Sarasota-Bradenton, FL MSA	397	504	641	825	897	Manatee, Sarasota
Tallahassee, FL MSA	405	448	591	773	931	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	386	460	569	757	917	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	485	567	701	932	1152	Palm Beach

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	380	416	470	583	634
Calhoun	380	416	470	583	634
Columbia	380	416	470	583	634
Dixie	380	416	470	583	634
Gilchrist	380	416	470	583	634
Gulf	380	416	470	583	634
Hardee	380	416	470	583	634
Highlands	380	416	470	585	654
Indian River	380	475	611	764	855
Jefferson	380	416	470	583	634
Levy	380	416	470	583	634
Madison	380	416	470	583	634
Okeechobee	380	416	470	583	640
Sumter	380	416	470	583	634
Taylor	380	416	470	583	635
Wakulla	380	416	470	583	634
Washington	380	416	470	583	634

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bradford	380	416	470	583	634
Citrus	380	416	470	583	634
Desoto	380	416	470	583	634
Franklin	380	416	470	583	634
Glades	380	416	470	583	634
Hamilton	380	416	470	583	634
Hendry	380	416	484	607	680
Holmes	380	416	470	583	634
Jackson	380	416	470	583	634
Lafayette	380	416	470	583	634
Liberty	380	416	470	583	634
Monroe	544	614	789	1087	1293
Putnam	380	416	470	583	634
Suwannee	380	416	470	583	634
Union	380	416	470	583	634
Walton	380	416	470	605	756

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	295	346	423	577	624	Dougherty, Lee
Athens, GA MSA	364	392	507	692	834	Clarke, Madison, Oconee
Atlanta, GA MSA	512	570	665	885	1072	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton
Augusta-Aiken, GA-SC MSA	350	419	493	670	792	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	357	417	500	646	737	Catoosa, Dade, Walker
Columbus, GA-AL MSA	341	380	455	595	645	Chattahoochee, Harris, Muscogee
Macon, GA MSA	382	426	494	682	701	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	356	441	514	693	721	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	276	333	407	527	599	Atkinson	276	333	407	527	599
Bacon	276	333	407	527	599	Baker	276	333	407	527	599
Baldwin	276	353	431	552	603	Banks	276	333	407	527	599
Ben Hill	276	333	407	527	607	Berrien	276	333	407	527	599
Bleckley	276	333	407	527	599	Brantley	276	333	407	527	599
Brooks	276	333	407	527	599	Bulloch	333	338	434	559	710
Burke	276	333	407	527	599	Butts	276	365	485	649	680
Calhoun	276	333	407	527	599	Camden	386	437	489	680	804
Candler	276	333	407	527	599	Charlton	276	333	407	527	599
Chattooga	276	333	407	527	599	Clay	276	333	407	527	599
Clinch	276	333	407	527	599	Coffee	276	333	407	527	607
Colquitt	276	333	407	527	599	Cook	276	333	407	527	599
Crawford	276	333	407	527	599	Crisp	279	333	407	527	599
Dawson	276	359	478	598	737	Decatur	276	333	407	527	599
Dodge	276	333	407	527	599	Dooly	276	333	407	527	599
Early	276	333	407	527	599	Echols	276	333	407	527	599
Elbert	276	333	407	527	599	Emanuel	276	333	407	527	599
Evans	276	333	407	527	599	Fannin	276	333	407	527	599
Floyd	276	333	408	538	599	Franklin	276	333	407	527	599
Gilmer	276	333	407	527	599	Glascock	276	333	407	527	599
Glynn	385	431	488	655	803	Gordon	328	333	415	535	683
Grady	281	333	407	527	599	Greene	276	333	407	527	599
Habersham	296	333	407	527	604	Hall	292	444	522	654	730
Hancock	276	333	407	527	599	Haralson	276	333	407	527	599
Hart	276	333	407	527	599	Heard	276	333	407	527	599
Irwin	276	333	407	527	599	Jackson	307	333	418	527	687
Jasper	276	333	412	559	599	Jeff Davis	276	333	407	527	599
Jefferson	276	333	407	527	607	Jenkins	276	333	407	527	599

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

G E O R G I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Johnson	276	333	407	527	599
Lanier	276	333	407	527	599
Liberty	344	383	436	606	611
Long	276	359	407	527	599
Lumpkin	276	372	419	560	687
Macon	276	333	407	527	599
Meriwether	276	333	407	527	599
Mitchell	276	333	407	527	599
Montgomery	276	333	407	527	599
Murray	276	333	407	527	599
Pierce	276	333	407	527	599
Polk	276	333	407	550	599
Putnam	276	333	407	527	607
Rabun	276	333	407	527	599
Schley	276	333	407	527	599
Seminole	276	333	407	527	599
Stewart	276	333	407	527	599
Talbot	276	333	407	527	599
Tattnall	276	333	407	527	599
Telfair	276	333	407	527	599
Thomas	276	343	407	527	599
Toombs	276	333	407	527	599
Treutlen	276	333	407	527	599
Turner	276	333	407	527	599
Upson	285	333	407	527	599
Warren	276	333	407	527	599
Wayne	285	333	407	527	599
Wheeler	276	333	407	527	599
Whitfield	276	362	436	557	657
Wilkes	276	333	407	527	599
Worth	276	333	407	527	599

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Lamar	276	342	407	527	645
Laurens	282	333	407	527	599
Lincoln	276	333	407	527	599
Lowndes	309	374	452	635	702
Mcintosh	276	333	407	527	599
Marion	276	333	407	527	599
Miller	276	333	407	527	599
Monroe	276	333	407	536	599
Morgan	276	333	422	527	599
Oglethorpe	276	333	407	527	599
Pike	321	348	440	613	617
Pulaski	276	333	407	527	599
Quitman	276	333	407	527	599
Randolph	276	333	407	527	599
Screven	276	333	407	527	599
Stephens	276	333	407	527	599
Sumter	276	338	407	527	599
Taliaferro	276	333	407	527	599
Taylor	276	333	407	527	599
Terrell	276	333	407	527	599
Tift	276	333	407	527	599
Towns	276	333	407	527	599
Troup	276	376	424	529	599
Union	276	333	425	532	599
Ware	305	343	407	527	633
Washington	276	333	407	527	599
Webster	276	333	407	527	599
White	276	333	407	527	613
Wilcox	276	333	407	527	599
Wilkinson	276	333	407	527	599

H A W A I I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	700	838	986	1333	1442	Honolulu

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

H A W A I I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hawaii	470	613	704	936	1153
Maui	759	941	1148	1483	1679
Kauai	600	897	1092	1444	1562

I D A H O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	384	439	532	739	874	Ada, Canyon
Pocatello, ID MSA	275	319	411	560	661	Bannock

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	275	319	411	544	644
Benewah	275	319	411	544	644
Blaine	425	467	623	869	1023
Bonner	316	391	484	671	772
Boundary	275	319	411	544	644
Camas	275	319	411	544	644
Cassia	275	319	411	544	644
Clearwater	275	319	411	544	644
Elmore	275	319	411	544	644
Fremont	275	319	411	544	644
Gooding	275	319	411	544	644
Jefferson	283	319	411	544	644
Kootenai	349	411	538	748	884
Lemhi	275	319	411	544	644
Lincoln	275	319	411	544	644
Minidoka	275	319	411	544	644
Oneida	276	319	411	544	644
Payette	275	319	411	544	644
Shoshone	275	319	411	544	644
Twin Falls	275	319	416	548	644
Washington	275	319	411	544	644
Bear Lake	275	319	411	544	644
Bingham	292	319	411	544	644
Boise	275	354	411	544	644
Bonneville	280	352	484	651	794
Butte	275	319	411	544	644
Caribou	275	319	411	544	644
Clark	275	319	411	544	644
Custer	275	319	411	544	644
Franklin	275	319	411	544	644
Gem	275	319	411	544	644
Idaho	275	319	411	544	644
Jerome	275	319	411	544	644
Latah	275	319	411	544	653
Lewis	275	319	411	544	644
Madison	275	319	411	544	644
Nez Perce	280	319	411	544	644
Owyhee	275	319	411	544	644
Power	275	319	411	544	644
Teton	299	319	411	556	658
Valley	286	319	411	544	644

I L L I N O I S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	331	404	541	751	793	Mclean
Champaign-Urbana, IL MSA	339	416	538	738	884	Champaign
Chicago, IL	529	635	756	946	1058	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	275	379	469	607	657	Henry, Rock Island

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

I L L I N O I S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Decatur, IL MSA	263	341	439	593	615	Macon
De Kalb County, IL	409	477	604	839	973	Dekalb
Grundy County, IL	358	413	549	725	771	Grundy
Kankakee, IL PMSA	325	393	525	670	735	Kankakee
Kendall County, Il	494	563	679	945	950	Kendall
Peoria-Pekin, IL MSA	367	405	543	722	887	Peoria, Tazewell, Woodford
Rockford, IL MSA	352	451	549	691	805	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	310	378	491	638	706	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	304	376	501	667	759	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	255	286	368	483	586	Alexander	255	286	368	483	542
Bond	255	286	368	483	542	Brown	255	286	368	483	542
Bureau	255	321	377	483	542	Calhoun	255	286	368	483	542
Carroll	255	286	368	483	542	Cass	256	286	368	483	542
Christian	274	286	370	485	542	Clark	255	286	368	483	542
Clay	255	286	368	483	542	Coles	269	320	426	565	669
Crawford	255	286	368	483	542	Cumberland	255	286	368	483	542
De Witt	259	286	368	487	542	Douglas	272	286	368	483	542
Edgar	255	286	368	483	542	Edwards	255	286	368	483	542
Effingham	255	295	368	483	542	Fayette	255	286	368	483	542
Ford	242	340	442	567	620	Franklin	255	286	368	483	542
Fulton	255	286	368	483	542	Gallatin	255	286	368	483	542
Greene	255	286	368	483	542	Hamilton	255	287	368	483	542
Hancock	255	286	368	483	542	Hardin	255	286	368	483	542
Henderson	255	286	368	483	542	Iroquois	255	286	368	483	542
Jackson	309	310	391	555	621	Jasper	255	288	368	483	542
Jefferson	256	300	375	511	542	Jo Daviess	282	305	368	483	542
Johnson	255	286	368	483	542	Knox	255	286	368	483	559
La Salle	255	298	398	538	603	Lawrence	255	286	368	483	542
Lee	284	292	390	488	548	Livingston	255	314	419	540	589
Logan	285	303	403	505	633	Mcdonough	255	291	368	483	580
Macoupin	255	286	368	483	542	Marion	260	286	368	483	542
Marshall	255	286	368	483	542	Mason	255	286	368	483	549
Massac	256	286	368	483	542	Mercer	255	286	368	483	542
Montgomery	255	286	368	483	542	Morgan	255	322	429	571	602
Moultrie	255	286	368	496	542	Perry	256	286	368	483	542
Piatt	255	310	402	549	563	Pike	255	286	368	483	542
Pope	255	286	368	483	542	Pulaski	255	286	368	483	542
Putnam	255	286	368	483	542	Randolph	255	286	368	483	542

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Richland	255	286	368	483	542
Schuyler	255	286	368	483	542
Shelby	255	286	368	483	542
Stephenson	269	308	389	487	546
Vermilion	255	324	405	507	567
Warren	269	286	368	483	542
Wayne	255	286	368	483	542
Whiteside	269	306	407	510	574

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Saline	255	286	368	483	542
Scott	255	286	368	483	542
Stark	255	286	368	483	542
Union	255	286	368	483	542
Wabash	255	286	368	483	572
Washington	255	305	406	509	661
White	255	286	368	483	542
Williamson	255	286	370	514	542

I N D I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	360	466	620	861	1017	Monroe
Cincinnati, OH-KY-IN	303	390	521	699	755	Dearborn
Elkhart-Goshen, IN MSA	363	414	524	670	769	Elkhart
Evansville-Henderson, IN-KY MSA	275	327	424	531	594	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	311	397	492	635	690	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	363	478	596	748	836	Lake, Porter
Indianapolis, IN MSA	355	445	535	670	751	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	334	396	516	663	722	Howard, Tipton
Lafayette, IN MSA	338	430	573	797	941	Clinton, Tippecanoe
Louisville, KY-IN MSA	310	398	488	674	711	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	289	360	426	578	683	Delaware
Ohio County, IN	281	316	404	521	573	Ohio
South Bend, IN MSA	312	415	546	682	765	St. Joseph
Terre Haute, IN MSA	281	329	419	524	584	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	390	420	507	633	833
Blackford	275	310	408	511	572
Carroll	275	310	396	510	560
Crawford	275	310	396	510	560
Decatur	275	335	429	555	604
Fayette	275	310	397	510	601
Franklin	275	310	396	510	627
Gibson	275	310	396	510	560
Greene	275	310	396	510	560
Jackson	337	353	437	577	620
Jay	275	310	396	510	560

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	275	310	396	510	560
Brown	275	365	481	668	691
Cass	275	310	396	510	560
Daviess	275	310	396	510	560
Dubois	275	310	396	510	578
Fountain	275	310	396	510	560
Fulton	303	317	396	533	560
Grant	290	310	396	512	560
Henry	275	310	396	510	560
Jasper	275	333	396	510	560
Jefferson	275	310	396	510	560

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jennings	287	310	396	510	560
Kosciusko	275	364	439	569	615
La Porte	280	338	453	580	634
Marshall	325	330	439	553	615
Miami	275	310	396	510	560
Newton	287	310	396	510	560
Orange	275	310	396	510	560
Parke	275	310	396	510	586
Pike	275	310	396	510	560
Putnam	299	348	428	574	579
Ripley	275	310	396	518	587
Spencer	275	310	396	510	560
Steuben	336	380	454	567	634
Switzerland	275	310	396	510	560
Wabash	275	310	396	510	560
Washington	275	310	396	510	560
White	275	310	396	510	619

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Knox	280	310	401	510	561
Lagrange	280	322	411	535	622
Lawrence	275	310	396	514	560
Martin	275	310	396	510	560
Montgomery	321	337	421	534	591
Noble	317	323	402	519	574
Owen	275	310	396	510	587
Perry	275	310	396	510	560
Pulaski	275	310	396	510	560
Randolph	275	310	396	510	560
Rush	283	310	396	510	587
Starke	275	310	396	510	560
Sullivan	275	310	396	510	560
Union	275	310	396	510	560
Warren	275	310	396	510	560
Wayne	275	310	396	510	560

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	268	378	486	677	726	Linn
Davenport-Moline-Rock Island, IA-IL MSA	275	379	469	607	657	Scott
Des Moines, IA MSA	346	438	538	698	733	Dallas, Polk, Warren
Dubuque, IA MSA	285	348	448	572	698	Dubuque
Iowa City, IA MSA	337	434	558	775	915	Johnson
Omaha, NE-IA MSA	291	399	503	660	740	Pottawattamie
Sioux City, IA-NE MSA	335	402	501	625	714	Woodbury
Waterloo-Cedar Falls, IA MSA	265	339	423	564	662	Black Hawk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	260	321	403	511	564
Allamakee	260	321	403	517	592
Audubon	260	321	403	511	564
Boone	260	341	403	517	612
Buchanan	274	321	403	511	564
Butler	277	321	403	511	564
Carroll	260	321	403	511	564
Cedar	260	325	403	511	564
Cherokee	260	321	403	511	564

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	260	321	403	511	564
Appanoose	260	321	403	511	568
Benton	267	321	403	511	564
Bremer	260	321	403	511	600
Buena Vista	275	321	403	511	564
Calhoun	260	321	403	511	564
Cass	260	321	403	511	564
Cerro Gordo	260	340	421	561	589
Chickasaw	260	321	403	511	564

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clarke	267	321	403	511	564
Clayton	260	321	403	511	564
Crawford	260	321	403	511	564
Decatur	260	321	403	511	564
Des Moines	260	331	426	534	596
Emmet	260	321	403	511	596
Floyd	283	321	403	511	564
Fremont	286	321	403	511	594
Grundy	260	321	403	511	580
Hamilton	296	336	408	511	571
Hardin	260	321	403	511	564
Henry	260	329	418	523	592
Humboldt	260	321	403	511	564
Iowa	260	321	403	511	564
Jasper	260	329	417	521	584
Jones	269	321	403	511	564
Kossuth	260	321	403	511	564
Louisa	260	321	403	511	564
Lyon	260	321	403	511	564
Mahaska	260	321	403	511	564
Marshall	260	321	403	511	564
Mitchell	260	321	403	511	564
Monroe	260	338	403	511	594
Muscatine	260	321	426	567	596
Osceola	260	321	403	511	564
Palo Alto	260	321	403	511	564
Pocahontas	260	321	403	511	564
Ringgold	260	321	403	511	564
Shelby	260	321	403	511	564
Story	338	411	484	671	768
Taylor	260	321	403	511	565
Van Buren	260	321	403	511	564
Washington	260	321	403	511	594
Webster	260	321	409	514	573
Winneshiek	260	321	403	511	564
Wright	260	321	403	511	564

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clay	260	321	403	511	564
Clinton	260	321	409	511	572
Davis	260	321	403	511	564
Delaware	260	321	403	511	564
Dickinson	260	321	403	511	564
Fayette	260	321	403	511	564
Franklin	267	321	403	511	564
Greene	260	321	403	511	564
Guthrie	260	321	403	511	593
Hancock	260	321	403	511	564
Harrison	260	321	403	511	564
Howard	260	321	403	511	589
Ida	267	321	403	511	564
Jackson	260	321	406	511	568
Jefferson	260	328	437	569	718
Keokuk	260	321	403	511	564
Lee	260	321	416	520	583
Lucas	260	321	403	511	564
Madison	260	321	419	537	588
Marion	260	356	437	546	612
Mills	260	347	410	514	574
Monona	260	321	403	511	564
Montgomery	286	322	403	511	564
O'Brien	260	321	403	511	564
Page	260	321	403	511	564
Plymouth	260	321	421	526	589
Poweshiek	275	341	437	546	612
Sac	260	321	403	511	564
Sioux	260	321	403	511	564
Tama	260	321	403	511	564
Union	260	321	403	511	594
Wapello	260	321	407	511	569
Wayne	260	321	403	511	564
Winnebago	260	326	403	511	564
Worth	260	321	403	511	573

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	341	429	516	714	791	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	346	414	532	740	852	Douglas
Topeka, KS MSA	325	374	486	657	741	Shawnee
Wichita, KS MSA	319	383	513	693	749	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	265	300	385	496	552
Atchison	265	300	385	496	592
Barton	265	300	385	496	552
Brown	265	300	385	496	552
Chautauqua	265	300	385	496	552
Cheyenne	265	300	385	496	552
Clay	265	300	385	496	552
Coffey	274	300	385	496	577
Cowley	283	300	385	508	552
Decatur	265	300	385	496	552
Doniphan	265	300	385	496	552
Elk	265	300	385	496	552
Ellsworth	265	300	385	496	552
Ford	284	335	418	526	593
Geary	325	342	428	552	599
Graham	265	300	385	496	552
Gray	265	300	385	496	552
Greenwood	265	300	385	496	552
Harper	265	300	385	496	552
Hodgeman	265	300	385	496	552
Jefferson	265	300	392	520	552
Kearny	294	300	396	533	585
Kiowa	265	300	385	496	552
Lane	265	300	385	496	552
Linn	265	300	385	496	552
Lyon	265	300	385	496	589
Marion	265	300	385	496	552
Meade	265	300	385	496	552
Montgomery	265	300	385	496	552
Morton	265	322	385	496	552
Neosho	265	300	385	496	552
Norton	265	300	385	496	552
Osborne	265	300	385	496	553
Pawnee	265	300	385	496	552

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	265	300	385	496	552
Barber	265	300	385	496	552
Bourbon	265	300	385	496	552
Chase	265	300	385	496	552
Cherokee	265	300	385	496	552
Clark	265	300	385	496	552
Cloud	265	300	385	496	552
Comanche	265	300	385	496	552
Crawford	265	300	392	496	552
Dickinson	265	300	385	496	552
Edwards	265	300	385	496	552
Ellis	265	300	385	496	552
Finney	326	349	447	582	736
Franklin	287	300	388	496	606
Gove	265	300	385	496	552
Grant	265	336	385	527	574
Greeley	265	300	385	496	552
Hamilton	265	300	385	496	552
Haskell	265	307	385	496	552
Jackson	265	300	385	496	552
Jewell	265	300	385	496	552
Kingman	265	300	385	496	552
Labette	265	300	385	496	552
Lincoln	265	300	385	496	552
Logan	265	300	385	496	552
Mcpherson	267	300	385	496	552
Marshall	265	300	385	496	552
Mitchell	265	300	385	496	552
Morris	265	300	385	496	552
Nemaha	265	300	385	496	552
Ness	265	300	385	496	552
Osage	265	300	385	496	552
Ottawa	265	300	385	496	552
Phillips	265	300	385	496	552

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie	265	300	385	496	565
Rawlins	265	300	385	496	552
Republic	265	300	385	496	552
Riley	328	361	481	601	730
Rush	265	300	385	496	552
Saline	346	357	472	652	660
Seward	298	324	432	541	604
Sherman	265	300	385	496	552
Stafford	265	300	385	496	552
Stevens	265	301	385	496	568
Thomas	265	300	385	496	552
Wabaunsee	265	300	385	496	552
Washington	265	300	385	496	552
Wilson	265	300	385	496	552

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pratt	265	300	385	506	552
Reno	265	300	385	496	600
Rice	265	300	385	496	552
Rooks	265	300	385	496	552
Russell	265	300	385	496	552
Scott	265	300	385	506	582
Sheridan	265	300	385	496	552
Smith	265	300	385	496	552
Stanton	265	300	385	496	552
Sumner	265	300	385	520	552
Trego	265	300	385	496	552
Wallace	265	300	385	496	552
Wichita	265	300	396	496	616
Woodson	265	300	385	496	552

K E N T U C K Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	303	390	521	699	755	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	331	371	434	593	609	Christian
Evansville-Henderson, IN-KY MSA	275	327	424	531	594	Henderson
Gallatin County, KY	252	344	421	527	689	Gallatin
Grant County, KY	251	299	396	553	654	Grant
Huntington-Ashland, WV-KY-OH MSA	297	348	429	547	602	Boyd, Carter, Greenup
Lexington, KY MSA	335	418	511	697	787	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	310	398	488	674	711	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	292	303	398	535	559	Daviess
Pendleton County, KY	253	293	391	491	549	Pendleton

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	246	300	354	469	515
Anderson	271	286	371	463	520
Barren	246	297	354	458	515
Bell	246	286	357	458	515
Bracken	246	286	354	458	515
Breckinridge	246	286	354	458	515
Caldwell	246	286	354	458	515
Carlisle	246	286	354	458	515
Casey	246	286	354	458	515
Clinton	246	286	354	458	515

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	246	286	354	458	515
Ballard	246	286	354	458	515
Bath	246	286	354	458	515
Boyle	292	296	395	495	554
Breathitt	246	286	354	458	515
Butler	246	286	354	458	515
Calloway	246	286	354	458	515
Carroll	246	286	354	458	515
Clay	246	286	354	458	515
Crittenden	246	286	354	458	515

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cumberland	246	286	354	458	515
Elliott	246	286	354	458	515
Fleming	246	286	354	458	515
Franklin	246	361	443	572	723
Garrard	246	286	354	458	515
Grayson	246	286	354	458	515
Hancock	246	286	354	462	548
Harlan	246	373	426	555	655
Hart	246	286	354	458	515
Hickman	246	286	354	458	515
Jackson	246	286	354	458	515
Knott	246	286	354	458	515
Larue	246	286	354	458	515
Lawrence	246	286	354	458	515
Leslie	246	286	354	458	515
Lewis	246	286	354	458	515
Livingston	283	286	382	531	535
Lyon	246	286	354	458	515
Mccreary	246	286	354	458	515
Magoffin	246	286	354	458	515
Marshall	246	292	354	458	551
Mason	246	286	354	458	515
Menifee	246	286	354	458	515
Metcalfe	246	286	354	458	515
Montgomery	246	286	354	458	515
Muhlenberg	246	286	354	458	515
Nicholas	246	286	354	458	515
Owen	246	286	354	458	528
Perry	275	286	369	461	517
Powell	246	286	354	458	515
Robertson	246	286	354	458	515
Rowan	246	286	354	458	535
Shelby	247	325	363	507	515
Spencer	246	292	354	458	515
Todd	246	286	354	458	515
Trimble	246	286	354	458	515
Warren	246	318	425	530	613
Wayne	246	286	354	458	515
Whitley	246	286	354	458	515

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Edmonson	246	286	354	458	515
Estill	246	286	354	458	515
Floyd	259	315	354	492	565
Fulton	246	286	354	458	515
Graves	246	286	354	458	515
Green	246	286	354	458	515
Hardin	305	314	392	528	626
Harrison	246	287	363	458	561
Henry	246	286	354	458	515
Hopkins	246	286	354	458	520
Johnson	246	286	354	458	515
Knox	246	340	435	545	669
Laurel	321	362	430	580	601
Lee	246	286	354	458	515
Letcher	246	286	354	458	515
Lincoln	246	286	354	458	515
Logan	246	286	354	467	515
Mccracken	278	299	374	479	615
Mclean	246	286	354	458	515
Marion	246	286	354	458	515
Martin	246	286	354	458	515
Meade	254	316	363	480	598
Mercer	246	286	354	467	515
Monroe	246	286	354	458	515
Morgan	246	286	354	458	515
Nelson	270	286	365	458	515
Ohio	246	286	354	458	515
Owsley	246	286	354	458	515
Pike	264	301	365	458	541
Pulaski	270	286	363	459	515
Rockcastle	246	286	354	458	515
Russell	246	286	354	458	515
Simpson	246	307	359	459	515
Taylor	296	350	392	525	593
Trigg	246	286	354	458	515
Union	246	286	354	458	515
Washington	246	290	354	458	515
Webster	246	286	354	458	515
Wolfe	246	286	354	458	515

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	274	343	431	597	607	Rapides
Baton Rouge, LA MSA	298	370	459	637	752	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	270	317	406	564	668	Lafourche, Terrebonne
Lafayette, LA MSA	287	330	393	542	641	Lafayette, Acadia, St. Landry, St. Martin
Lake Charles, LA MSA	369	429	544	713	893	Calcasieu
Monroe, LA MSA	297	332	443	598	621	Ouachita
New Orleans, LA	352	403	503	685	828	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	266	301	401	500	561	St. James
Shreveport-Bossier City, LA MSA	334	380	478	639	784	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	264	287	353	463	516
Avoyelles	264	287	353	463	518
Bienville	264	287	353	469	555
Cameron	264	287	353	463	516
Claiborne	264	287	353	463	516
De Soto	264	287	353	463	520
East Feliciana	264	287	353	463	516
Franklin	264	287	353	463	520
Iberia	279	291	361	463	516
Jackson	264	287	353	463	516
La Salle	264	287	353	463	520
Madison	264	287	353	463	516
Natchitoches	282	289	373	517	520
Red River	264	287	353	463	520
Sabine	264	294	353	463	545
St. Mary	289	310	389	530	553
Tensas	264	287	353	463	516
Vermilion	264	287	353	463	516
Washington	264	287	353	463	516
West Feliciana	264	343	460	575	645

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Assumption	289	311	368	463	516
Beauregard	322	350	415	543	597
Caldwell	264	287	353	463	516
Catahoula	264	287	353	463	516
Concordia	264	287	353	463	516
East Carroll	264	287	353	463	516
Evangeline	264	287	353	463	516
Grant	264	287	353	463	516
Iberville	264	287	353	463	532
Jefferson Davis	264	287	353	463	524
Lincoln	311	313	390	535	641
Morehouse	264	287	353	463	516
Pointe Coupee	264	287	353	463	561
Richland	264	287	353	463	520
St. Helena	264	287	353	463	516
Tangipahoa	283	294	378	495	528
Union	264	287	353	463	520
Vernon	303	338	385	498	588
West Carroll	264	287	353	463	516
Winn	264	287	353	463	516

M A I N E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	343	419	537	701	753	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

M A I N E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	309	381	490	613	687	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	374	482	634	793	889	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	442	529	680	871	1069	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	315	389	517	646	723	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	315	369	474	604	695	
Cumberland	461	470	626	852	977	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	322	369	474	604	695	
Hancock	340	416	515	649	720	
Kennebec	328	409	492	617	695	
Knox	315	406	527	702	740	
Lincoln	410	456	519	721	852	
Oxford	315	369	474	604	695	
Penobscot	315	369	474	604	695	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

M A I N E continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Piscataquis	315	369	474	604	695	
Sagadahoc	444	508	626	833	1028	
Somerset	330	376	474	604	712	
Waldo	315	369	474	604	695	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	315	369	474	604	695	
York	389	446	597	747	835	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	414	507	618	818	936	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	556	747	869	1149	1436	Columbia
Cumberland, MD-WV MSA	328	395	488	645	737	Allegany
Hagerstown, MD PMSA	326	393	488	642	733	Washington
Washington, DC-MD-VA	609	692	812	1106	1333	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	425	562	654	889	1073	Cecil

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Caroline	362	390	488	640	726
Garrett	323	434	488	636	801
St. Mary's	494	586	676	942	1077
Talbot	428	453	604	757	991
Worcester	323	390	489	679	726
Dorchester	323	418	488	636	726
Kent	327	403	538	672	810
Somerset	385	433	488	677	800
Wicomico	364	421	543	690	760

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	460	616	822	1029	1152	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA.....	620	697	874	1092	1282	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA.....	415	547	671	835	951	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA.....	325	456	592	762	828	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA.....	417	504	633	791	974	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA.....	455	589	711	891	997	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA.....	436	533	606	757	850	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA.....	316	449	554	694	860	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA.....	401	545	655	822	1013	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA.....	411	508	642	802	986	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA-CT.....	403	488	610	761	853	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	444	609	811	1014	1135	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	373	454	535	735	880	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	600	610	812	1015	1138	
Franklin	403	500	639	800	966	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	407	554	740	984	1214	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	570	577	771	965	1081	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	720	965	1287	1609	1802	
Worcester	453	473	630	789	882	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	456	552	681	893	1001	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	368	372	488	611	686	Berrien
Detroit, MI PMSA	376	512	618	773	867	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	357	406	508	649	711	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	385	450	549	689	770	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	290	390	493	617	692	Jackson
Kalamazoo-Battle Creek, MI MSA	342	413	521	652	728	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	386	454	586	766	885	Clinton, Eaton, Ingham

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I C H I G A N continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	336	371	493	617	692	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	284	323	410	533	608	Alger	284	323	410	533	608
Alpena	284	323	410	533	612	Antrim	284	340	410	533	608
Arenac	284	323	410	533	608	Baraga	284	323	410	533	608
Barry	284	350	466	584	654	Benzie	297	323	410	551	608
Branch	328	336	413	564	608	Cass	284	323	412	562	608
Charlevoix	345	349	442	601	622	Cheboygan	299	323	410	533	623
Chippewa	284	323	410	533	608	Clare	295	323	410	533	608
Crawford	311	323	419	572	608	Delta	284	323	410	533	608
Dickinson	284	349	431	538	608	Emmet	317	380	449	589	627
Gladwin	284	323	410	533	608	Gogebic	284	323	410	533	608
Grand Traverse	376	402	537	672	753	Gratiot	297	323	410	533	608
Hillsdale	284	323	410	533	608	Houghton	284	323	410	533	608
Huron	284	323	410	533	608	Ionia	348	352	441	550	618
Iosco	284	323	410	533	643	Iron	284	323	410	533	608
Isabella	317	338	453	612	742	Kalkaska	284	323	411	535	676
Keweenaw	284	323	410	533	608	Lake	287	323	410	533	608
Leelanau	384	416	487	636	798	Luce	284	323	410	533	608
Mackinac	284	323	410	533	608	Manistee	284	323	410	533	608
Marquette	284	323	410	533	608	Mason	284	323	410	533	608
Mecosta	284	323	410	555	659	Menominee	284	323	410	533	608
Missaukee	299	323	410	533	608	Montcalm	288	323	410	533	608
Montmorency	284	323	410	533	608	Newaygo	326	350	411	533	608
Oceana	303	323	410	533	608	Ogemaw	296	324	410	533	608
Ontonagon	284	323	410	533	608	Osceola	284	323	410	533	608
Oscoda	284	323	410	533	608	Otsego	291	352	444	617	716
Presque Isle	284	323	410	533	608	Roscommon	314	323	410	533	608
St. Joseph	284	330	410	535	608	Sanilac	284	333	410	535	608
Schoolcraft	284	323	410	533	608	Shiawassee	284	356	429	597	639
Tuscola	309	336	449	560	627	Wexford	284	327	425	556	659

M I N N E S O T A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	267	351	451	602	701	St. Louis
Fargo-Moorhead, ND-MN MSA	322	444	536	743	796	Clay
Grand Forks, ND-MN MSA	333	397	522	720	803	Polk

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I N N E S O T A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	276	356	453	606	734	Houston
Minneapolis-St. Paul, MN-WI MSA	392	504	644	872	987	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	305	427	559	774	868	Olmsted
St. Cloud, MN MSA	316	408	482	610	777	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	264	342	456	571	638
Beltrami	261	333	446	584	624
Blue Earth	355	429	534	684	868
Carlton	261	317	402	504	576
Chippewa	261	317	402	504	576
Cook	309	317	414	565	589
Crow Wing	261	317	423	529	665
Douglas	261	317	402	504	576
Fillmore	261	317	402	504	576
Goodhue	261	335	448	571	627
Hubbard	266	317	402	504	576
Jackson	261	317	402	504	576
Kandiyohi	261	330	402	504	606
Koochiching	315	321	427	533	699
Lake	261	317	402	504	576
Le Sueur	261	317	402	504	621
Lyon	261	317	402	504	597
Mahnomen	261	317	402	504	576
Martin	261	317	402	504	576
Mille Lacs	277	317	403	561	662
Mower	261	317	402	504	576
Nicollet	326	349	465	616	652
Norman	261	317	402	504	576
Pennington	261	317	402	538	576
Pipestone	261	317	402	504	576
Red Lake	261	328	402	504	576
Renville	261	317	402	504	576
Rock	261	317	402	504	576
Sibley	261	317	402	504	576
Stevens	297	375	423	529	593
Todd	261	317	402	504	576
Wabasha	261	317	402	504	576
Waseca	339	373	473	593	678

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Becker	261	374	420	525	589
Big Stone	261	317	402	504	576
Brown	261	336	402	504	576
Cass	261	317	402	504	576
Clearwater	261	317	402	504	576
Cottonwood	261	317	402	504	576
Dodge	261	317	402	504	576
Faribault	261	317	402	504	576
Freeborn	261	317	410	540	578
Grant	261	317	402	504	576
Itasca	333	337	440	550	616
Kanabec	261	327	425	531	595
Kittson	261	317	402	504	576
Lac qui Parle	261	317	402	504	576
Lake of the Woods	261	317	402	504	576
Lincoln	261	317	402	504	576
Mcleod	261	336	448	557	625
Marshall	261	317	402	504	576
Meeker	270	317	402	504	576
Morrison	289	317	402	504	576
Murray	261	317	402	504	576
Nobles	261	317	402	504	576
Otter Tail	261	317	402	504	576
Pine	288	317	402	507	576
Pope	261	317	402	504	576
Redwood	261	317	402	504	576
Rice	309	422	562	702	786
Roseau	315	321	421	543	591
Steele	309	358	477	596	668
Swift	261	317	402	504	576
Traverse	261	317	402	504	576
Wadena	261	317	402	504	576
Watonwan	261	317	402	504	576

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wilkin	261	317	402	504	576
Yellow Medicine	261	317	402	504	576
Winona	266	346	439	548	615

M I S S I S S I P P I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	348	409	470	655	773	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	257	316	386	519	619	Forrest, Lamar
Jackson, MS MSA	354	404	494	657	693	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	340	395	465	646	679	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	245	290	361	462	589
Amite	245	290	359	462	520
Benton	245	290	359	462	520
Calhoun	245	290	359	462	520
Chickasaw	245	290	359	462	520
Claiborne	245	290	359	462	520
Clay	245	290	359	462	525
Copiah	245	290	359	462	520
Franklin	248	290	359	462	520
Greene	245	290	359	462	520
Holmes	245	290	359	462	520
Issaquena	257	353	469	587	658
Jasper	245	290	359	462	520
Jefferson Davis	245	290	359	462	520
Kemper	247	290	359	462	520
Lauderdale	245	316	397	515	557
Leake	245	290	359	462	520
Leflore	245	290	359	463	556
Lowndes	302	326	386	484	546
Marshall	245	290	359	462	528
Montgomery	245	290	359	462	520
Newton	245	290	359	462	520
Oktibbeha	300	313	382	531	627
Pearl River	257	290	359	464	520
Pike	249	290	359	462	520
Prentiss	248	290	359	462	520
Scott	245	290	359	462	520
Simpson	248	290	359	462	520
Alcorn	245	290	359	462	520
Attala	245	290	359	462	520
Bolivar	278	290	374	467	534
Carroll	245	290	359	462	520
Choctaw	245	290	359	462	520
Clarke	245	290	359	462	520
Coahoma	284	290	383	481	538
Covington	245	290	359	462	520
George	245	290	359	462	520
Grenada	245	291	359	491	520
Humphreys	245	290	359	462	520
Itawamba	245	290	359	462	520
Jefferson	245	290	359	462	520
Jones	245	290	359	462	520
Lafayette	248	340	452	567	634
Lawrence	245	290	359	462	520
Lee	306	330	397	497	557
Lincoln	245	290	359	462	520
Marion	245	290	359	462	520
Monroe	245	290	359	462	520
Neshoba	245	290	359	462	520
Noxubee	249	290	359	462	520
Panola	253	290	359	462	520
Perry	245	290	359	462	520
Pontotoc	245	290	359	462	520
Quitman	245	290	359	462	520
Sharkey	249	290	359	462	520
Smith	245	290	359	462	520

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Stone	245	290	359	462	520
Tallahatchie	245	290	359	462	520
Tippah	245	290	359	462	520
Tunica	245	290	359	462	520
Walthall	245	290	359	462	520
Washington	265	315	421	543	598
Webster	247	290	359	462	520
Winston	245	290	359	462	520
Yazoo	249	290	359	462	520
Sunflower	271	294	359	462	552
Tate	245	331	382	479	629
Tishomingo	245	290	359	462	520
Union	245	290	359	462	520
Warren	245	320	399	551	660
Wayne	245	290	359	462	520
Wilkinson	245	290	359	462	520
Yalobusha	247	290	359	462	520

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	255	359	467	650	766	Boone
Joplin, MO MSA	249	288	382	503	541	Jasper, Newton
Kansas City, MO-KS MSA	341	429	516	714	791	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	239	290	387	488	542	Andrew, Buchanan
St. Louis, MO-IL MSA	310	378	491	638	706	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	261	331	428	591	616	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	234	292	388	488	586
Audrain	250	270	347	469	542
Barton	234	270	347	451	517
Benton	264	270	358	451	517
Butler	234	270	347	451	517
Callaway	277	281	373	474	613
Cape Girardeau	241	296	394	525	644
Carter	234	270	347	451	517
Chariton	234	270	347	451	517
Cole	234	309	412	549	576
Crawford	257	309	348	459	517
Dallas	234	270	347	451	517
Dekalb	242	270	347	456	517
Douglas	234	270	347	451	517
Gasconade	234	270	347	451	517
Grundy	234	270	347	451	517
Henry	267	272	362	454	596
Holt	234	270	347	451	517
Howell	234	270	347	451	517
Atchison	234	270	347	451	517
Barry	234	279	347	451	517
Bates	234	270	347	451	527
Bollinger	234	270	347	451	517
Caldwell	234	272	365	457	517
Camden	308	311	416	577	678
Carroll	234	270	347	451	517
Cedar	234	270	347	451	517
Clark	234	270	347	451	517
Cooper	234	270	347	451	517
Dade	234	270	347	451	517
Daviess	234	270	347	451	517
Dent	234	270	347	451	517
Dunklin	234	270	347	451	517
Gentry	234	270	347	451	517
Harrison	234	270	347	451	517
Hickory	234	270	347	451	517
Howard	234	270	347	451	519
Iron	234	270	347	451	517

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Johnson	282	314	410	543	642
Laclede	234	270	347	454	517
Lewis	234	270	347	451	517
Livingston	234	270	348	451	517
Macon	234	270	347	451	517
Maries	234	270	347	451	517
Mercer	234	270	347	451	517
Mississippi	234	270	347	451	517
Monroe	234	270	347	451	517
Morgan	234	270	347	451	517
Nodaway	247	299	368	468	564
Osage	234	270	347	451	517
Pemiscot	234	270	347	451	517
Pettis	251	294	394	495	593
Pike	234	270	347	451	544
Pulaski	234	328	368	487	544
Ralls	234	270	347	451	517
Reynolds	234	270	347	451	517
St. Clair	234	270	347	451	517
St. Francois	247	311	394	494	648
Schuyler	234	270	347	451	517
Scott	282	284	379	511	589
Shelby	234	270	347	451	517
Stone	272	289	359	459	517
Taney	265	292	383	517	608
Vernon	234	270	347	462	517
Wayne	234	270	347	451	517
Wright	234	270	347	451	517

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Knox	234	270	347	451	517
Lawrence	248	277	347	451	517
Linn	234	270	347	451	517
Mcdonald	234	270	347	451	517
Madison	234	270	347	451	517
Marion	234	270	347	451	517
Miller	257	309	347	454	537
Moniteau	234	270	347	451	517
Montgomery	234	270	347	451	517
New Madrid	234	270	347	451	517
Oregon	234	270	347	451	517
Ozark	234	270	347	451	517
Perry	272	277	369	491	517
Phelps	242	290	372	505	548
Polk	234	271	347	451	542
Putnam	234	270	347	451	517
Randolph	234	270	347	451	517
Ripley	234	270	347	451	517
Ste. Genevieve	234	279	358	459	581
Saline	234	270	356	451	517
Scotland	234	270	347	451	517
Shannon	234	270	347	451	517
Stoddard	234	270	347	451	517
Sullivan	234	270	347	451	517
Texas	234	270	347	451	517
Washington	274	331	371	464	520
Worth	234	270	347	451	517

M O N T A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	314	364	488	655	795	Yellowstone
Great Falls, MT MSA	314	362	478	622	741	Cascade

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M O N T A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	289	334	441	573	670
Blaine	289	334	441	573	670
Carbon	289	339	441	573	670
Chouteau	289	334	441	573	670
Daniels	289	355	441	573	670
Deer Lodge	289	334	441	573	670
Fergus	289	334	441	573	670
Gallatin	357	416	558	717	917
Glacier	289	334	441	573	670
Granite	289	334	441	573	670
Jefferson	305	334	441	573	670
Lake	315	334	441	573	670
Liberty	289	334	441	573	670
Mccone	289	353	441	573	670
Meagher	289	355	441	573	670
Missoula	316	371	494	636	809
Park	289	334	441	573	677
Phillips	289	334	441	573	670
Powder River	289	339	441	573	670
Prairie	289	334	441	573	670
Richland	289	362	441	573	670
Rosebud	289	334	441	573	670
Sheridan	297	334	441	573	670
Stillwater	295	334	441	573	670
Teton	289	334	441	573	670
Treasure	289	334	441	573	670
Wheatland	289	334	441	573	670

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	289	334	441	573	670
Broadwater	289	334	441	573	715
Carter	289	355	441	573	670
Custer	289	334	441	573	670
Dawson	289	334	441	573	670
Fallon	289	334	441	573	670
Flathead	289	335	448	624	735
Garfield	289	334	441	573	670
Golden Valley	289	354	441	573	670
Hill	298	334	441	573	670
Judith Basin	289	355	441	573	670
Lewis and Clark	322	377	501	697	825
Lincoln	315	334	441	573	670
Madison	295	334	441	573	670
Mineral	289	334	441	573	684
Musselshell	294	334	441	573	670
Petroleum	289	334	441	573	670
Pondera	289	354	441	573	670
Powell	294	334	441	573	670
Ravalli	289	334	441	573	670
Roosevelt	302	334	441	573	670
Sanders	289	334	441	573	670
Silver Bow	289	334	441	573	670
Sweet Grass	312	334	441	573	670
Toole	295	334	441	573	670
Valley	289	334	441	573	670
Wibaux	289	355	441	573	670

N E B R A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	305	392	517	686	800	Lancaster
Omaha, NE-IA MSA	291	399	503	660	740	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	335	402	501	625	714	Dakota

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	243	325	430	539	646
Arthur	233	300	383	489	557
Blaine	233	300	383	489	557
Box Butte	253	300	383	490	579
Brown	233	300	383	489	569
Burt	233	300	383	489	557
Cedar	233	300	383	489	557
Cherry	233	315	383	492	580
Clay	233	300	383	489	557
Cuming	233	316	383	489	557
Dawes	249	300	383	493	582
Deuel	233	300	383	489	557
Dodge	233	300	395	520	557
Fillmore	233	300	383	489	557
Frontier	262	300	383	489	557
Gage	233	301	390	496	557
Garfield	233	300	383	489	557
Grant	233	300	383	489	557
Hall	280	368	490	646	723
Harlan	233	300	383	490	557
Hitchcock	233	300	383	489	557
Hooker	233	314	383	490	557
Jefferson	233	300	383	489	557
Kearney	233	300	383	489	582
Keya Paha	233	300	383	489	557
Knox	233	311	383	489	557
Logan	233	300	383	489	583
Mcpherson	233	300	383	490	557
Merrick	233	300	383	489	557
Nance	233	300	383	489	557
Nuckolls	233	300	383	489	557
Pawnee	233	300	383	493	557
Phelps	261	300	383	490	582
Platte	233	300	383	535	557
Red Willow	233	300	383	489	567
Rock	233	307	383	489	557
Saunders	233	300	383	489	557
Seward	289	300	391	489	557
Sherman	233	302	383	489	583
Stanton	233	300	383	489	557

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Antelope	233	315	383	492	557
Banner	233	300	383	490	557
Boone	233	300	383	489	580
Boyd	233	313	383	489	557
Buffalo	251	363	456	569	687
Butler	233	300	383	489	557
Chase	233	316	383	489	584
Cheyenne	261	300	383	489	557
Colfax	254	312	383	489	557
Custer	261	302	383	489	579
Dawson	256	312	383	493	557
Dixon	260	300	383	489	557
Dundy	233	300	383	489	557
Franklin	233	300	383	494	557
Furnas	233	300	383	489	580
Garden	233	312	383	492	582
Gosper	233	300	383	489	564
Greeley	233	300	383	489	567
Hamilton	233	300	383	493	557
Hayes	233	314	383	489	580
Holt	233	300	383	489	557
Howard	233	300	383	489	557
Johnson	233	304	383	489	557
Keith	233	300	383	489	557
Kimball	233	300	383	490	582
Lincoln	239	312	383	489	557
Loup	233	300	383	489	581
Madison	239	314	416	538	656
Morrill	233	302	383	489	580
Nemaha	233	300	383	489	557
Otoe	233	300	383	489	583
Perkins	233	300	383	489	557
Pierce	233	300	383	489	557
Polk	233	300	383	489	557
Richardson	233	300	383	489	557
Saline	233	313	383	489	557
Scotts Bluff	237	311	395	489	580
Sheridan	233	300	383	489	558
Sioux	233	300	383	489	582
Thayer	233	315	383	489	557

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Thomas	233	300	383	489	557
Valley	233	300	383	489	557
Webster	233	300	383	489	557
York	233	300	388	489	557
Thurston	233	300	383	489	557
Wayne	267	300	383	489	580
Wheeler	233	300	383	490	557

N E V A D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	482	572	681	948	1119	Clark, Nye
Reno, NV MSA	467	541	695	968	1144	Washoe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Churchill	432	438	586	808	959
Elko	393	448	598	789	982
Eureka	318	519	585	728	815
Lander	321	498	585	731	958
Lyon	381	455	585	814	959
Pershing	442	448	598	748	855
White Pine	319	439	585	789	830
Douglas	388	566	709	984	1096
Esmeralda	416	519	585	729	818
Humboldt	468	491	592	776	831
Lincoln	319	480	585	732	819
Mineral	323	441	588	770	964
Storey	448	454	598	833	982
Carson City	336	459	614	853	1007

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	620	697	874	1092	1282	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	417	504	633	791	974	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	455	589	711	891	997	Hillsborough county towns of Pelham town
Manchester, NH PMSA	367	523	653	816	915	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	432	602	747	1016	1209	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	442	529	680	871	1069	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 33

N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town
						Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	423	489	643	868	1056	
Carroll	354	485	646	809	1010	
Cheshire	439	521	666	867	1028	
Coos	302	369	474	618	732	
Grafton	389	470	626	809	1023	
Hillsborough	415	519	692	915	1101	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	437	522	651	834	932	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	453	531	710	985	1137	Deerfield town, Northwood town, Nottingham town
Strafford	401	544	726	911	1021	Middleton town, New Durham town, Strafford town
Sullivan	422	429	556	731	779	

N E W J E R S E Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	476	541	721	903	1032	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	637	776	910	1213	1496	Bergen, Passaic
Jersey City, NJ PMSA	582	687	800	1016	1119	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	679	744	929	1262	1457	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	560	671	851	1131	1326	Monmouth, Ocean
Newark, NJ PMSA	539	688	829	1044	1320	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	463	570	704	881	1104	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	462	644	784	1062	1282	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	459	559	675	841	945	Cumberland

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E W M E X I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	385	459	574	791	934	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	287	361	429	588	693	Dona Ana
Santa Fe, NM MSA	415	589	727	976	1105	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Catron	267	313	388	521	588
Cibola	278	304	388	521	588
Curry	267	311	407	521	588
Eddy	274	303	388	521	606
Guadalupe	267	303	388	521	592
Hidalgo	267	303	388	521	588
Lincoln	303	311	410	540	675
Mckinley	267	336	427	532	596
Otero	267	303	388	541	588
Rio Arriba	313	320	393	521	588
San Juan	302	324	404	561	664
Sierra	267	303	388	521	588
Taos	459	465	620	775	1020
Union	267	326	388	521	588

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Chaves	267	304	401	552	588
Colfax	267	311	388	521	588
Debaca	267	304	388	521	588
Grant	317	361	462	620	700
Harding	267	303	388	521	588
Lea	267	303	388	521	588
Luna	294	324	414	556	627
Mora	267	303	388	521	588
Quay	267	387	436	546	610
Roosevelt	267	303	388	521	588
San Miguel	296	303	400	521	588
Socorro	267	303	388	521	604
Torrance	293	317	388	521	588

N E W Y O R K

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	393	483	595	746	834	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	352	396	493	627	703	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	358	436	525	656	735	Erie, Niagara
Dutchess County, NY PMSA	541	687	849	1103	1289	Dutchess
Elmira, NY MSA	352	396	485	615	732	Chemung
Glens Falls, NY MSA	352	459	559	700	783	Warren, Washington
Jamestown, NY MSA	352	396	475	615	703	Chautauqua
Nassau-Suffolk, NY PMSA	728	877	1070	1488	1594	Nassau, Suffolk
New York, NY PMSA	681	759	862	1078	1208	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	654	852	1038	1350	1611	Westchester
Newburgh, NY-PA PMSA	533	693	848	1075	1227	Orange
Rochester, NY MSA	379	493	600	769	840	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	377	455	563	719	798	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	352	396	484	615	703	Herkimer, Oneida

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allegany	352	396	475	615	703
Chenango	375	396	475	615	703
Columbia	440	462	593	777	831
Delaware	352	396	475	615	755
Franklin	352	396	475	615	703
Greene	352	456	548	707	862
Jefferson	379	447	526	659	737
Otsego	352	417	479	619	786
Schuyler	381	406	482	672	791
Steuben	364	415	475	622	703
Tompkins	459	495	636	887	1046
Wyoming	352	396	475	615	703

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	352	396	475	615	703
Clinton	352	396	512	640	717
Cortland	352	421	527	659	779
Essex	352	401	503	630	703
Fulton	352	396	475	615	703
Hamilton	352	424	487	615	703
Lewis	352	396	475	615	703
St. Lawrence	352	396	475	615	703
Seneca	376	404	488	631	703
Sullivan	456	512	624	862	874
Ulster	433	601	723	941	1186
Yates	352	396	475	615	703

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	300	363	473	616	665	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	426	480	540	712	853	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	367	417	467	646	769	Cumberland
Goldsboro, NC MSA	300	346	421	541	632	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	397	452	539	743	756	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	392	397	515	694	849	Pitt
Hickory-Morganton, NC MSA	379	413	479	603	716	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	342	399	451	626	740	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	425	478	566	789	927	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	444	539	633	849	1001	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	320	346	421	557	614	Edgecombe, Nash
Wilmington, NC MSA	438	482	590	807	962	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	288	338	404	520	616
Ashe	288	333	404	520	590
Beaufort	288	333	404	520	590
Bladen	288	333	404	520	590
Carteret	327	357	436	606	674
Cherokee	288	333	404	520	590
Clay	288	333	404	520	590
Columbus	288	333	404	520	590
Dare	299	474	546	748	765
Gates	288	333	404	520	590

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anson	288	333	404	520	590
Avery	322	362	441	553	618
Bertie	288	333	404	520	590
Camden	288	368	491	614	689
Caswell	288	333	404	520	590
Chowan	288	333	404	520	590
Cleveland	288	339	404	535	590
Craven	288	360	434	568	608
Duplin	288	333	404	520	590
Graham	288	333	404	520	590

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Granville	304	333	404	535	605
Halifax	288	333	404	520	590
Haywood	300	342	416	558	607
Hertford	288	333	404	520	590
Hyde	288	333	404	520	590
Jackson	288	333	404	565	738
Lee	288	368	436	565	612
Mcdowell	288	351	422	576	682
Martin	288	333	404	520	590
Montgomery	288	333	404	520	590
Northampton	288	333	404	520	590
Pasquotank	333	355	443	616	622
Perquimans	288	333	404	520	590
Polk	288	365	410	520	590
Robeson	288	340	404	520	590
Rutherford	291	333	404	520	590
Scotland	288	333	404	520	590
Surry	288	333	404	520	590
Transylvania	334	356	451	598	640
Vance	305	346	404	520	590
Washington	288	333	404	520	590
Wilkes	328	369	416	575	646
Yancey	288	339	404	520	609

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Greene	288	333	404	520	590
Harnett	288	333	404	522	590
Henderson	373	384	475	632	728
Hoke	288	333	404	520	590
Iredell	389	399	526	658	736
Jones	288	333	404	520	590
Lenoir	288	333	404	520	590
Macon	288	345	404	520	590
Mitchell	288	377	433	591	618
Moore	288	348	415	567	680
Pamlico	288	333	404	520	590
Pender	288	349	404	520	636
Person	288	333	433	565	661
Richmond	288	333	404	520	590
Rockingham	288	333	404	520	590
Sampson	288	333	404	520	590
Stanly	288	333	410	553	590
Swain	288	333	404	520	590
Tyrrell	288	333	404	520	590
Warren	288	333	404	520	590
Watauga	376	451	571	777	937
Wilson	301	333	409	520	590

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	328	367	490	682	806	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	322	444	536	743	796	Cass
Grand Forks, ND-MN MSA	333	397	522	720	803	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	223	279	361	469	547
Benson	253	279	361	469	547
Bottineau	223	279	361	469	547
Burke	242	279	361	469	547
Dickey	242	279	361	469	547
Dunn	223	279	361	469	547
Emmons	223	279	361	469	547
Golden Valley	223	286	381	476	547

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barnes	223	281	373	487	547
Billings	242	279	361	469	547
Bowman	223	279	361	469	547
Cavalier	223	287	383	477	589
Divide	223	279	361	469	547
Eddy	223	279	361	469	547
Foster	223	279	363	469	547
Grant	223	279	361	469	547

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Griggs	223	279	361	469	547
Kidder	223	279	361	469	547
Logan	223	279	361	469	547
Mcintosh	223	279	361	469	547
Mclean	236	279	361	469	547
Mountrail	246	279	361	469	547
Oliver	223	279	361	469	547
Pierce	223	279	361	483	547
Ransom	227	279	361	469	547
Richland	234	279	368	469	547
Sargent	223	279	361	469	547
Sioux	223	279	361	469	547
Stark	223	279	361	469	547
Stutsman	267	279	365	508	599
Traill	234	297	361	469	547
Ward	223	306	408	552	658
Williams	223	279	361	469	547

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hettinger	223	279	361	469	547
Lamoure	242	279	361	469	547
Mchenry	223	279	361	469	547
Mckenzie	223	279	361	469	547
Mercer	223	279	361	469	547
Nelson	223	279	361	469	547
Pembina	223	279	361	475	565
Ramsey	229	306	408	511	668
Renville	258	279	361	472	557
Rolette	241	307	371	469	547
Sheridan	223	279	361	469	547
Slope	223	279	361	469	547
Steele	223	279	361	469	547
Towner	255	286	381	476	626
Walsh	296	317	393	493	551
Wells	237	279	361	469	547

O H I O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	344	418	536	670	752	Portage, Summit
Brown County, OH	280	329	411	532	587	Brown
Canton-Massillon, OH MSA	279	363	464	580	651	Carroll, Stark
Cincinnati, OH-KY-IN	303	390	521	699	755	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	345	434	537	683	770	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	358	423	543	690	793	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	344	385	492	635	713	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	305	434	556	695	778	Butler
Huntington-Ashland, WV-KY-OH MSA	297	348	429	547	602	Lawrence
Lima, OH MSA	279	334	440	561	616	Allen, Auglaize
Mansfield, OH MSA	279	334	425	531	595	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	299	358	410	531	576	Washington
Steubenville-Weirton, OH-WV MSA	279	329	412	526	586	Jefferson
Toledo, OH MSA	349	424	519	668	725	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	305	333	412	526	586	Belmont
Youngstown-Warren, OH MSA	292	344	431	542	617	Columbiana, Mahoning, Trumbull

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O H I O continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	273	323	403	515	576
Athens	322	365	429	561	690
Clinton	273	350	421	586	591
Darke	300	323	406	515	576
Erie	273	364	454	613	742
Gallia	273	323	403	515	576
Hancock	346	350	443	565	619
Harrison	273	323	403	515	576
Highland	273	323	403	515	576
Holmes	273	323	403	515	576
Jackson	273	323	403	515	576
Logan	320	324	419	563	587
Meigs	273	323	403	515	576
Monroe	273	323	403	515	576
Morrow	273	323	403	515	576
Noble	273	323	403	515	584
Paulding	273	323	403	515	576
Pike	287	341	424	543	606
Putnam	283	323	403	515	576
Sandusky	273	354	454	572	633
Seneca	274	323	403	519	576
Tuscarawas	273	323	423	529	593
Van Wert	273	327	403	515	576
Wayne	273	361	444	563	621
Wyandot	273	323	403	515	576

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	273	323	426	532	596
Champaign	273	332	433	540	605
Coshocton	273	323	403	515	576
Defiance	285	323	427	538	598
Fayette	297	323	403	515	576
Guernsey	273	323	403	515	576
Hardin	273	323	403	515	576
Henry	295	326	407	525	598
Hocking	273	323	403	515	576
Huron	316	344	429	565	602
Knox	321	353	453	585	647
Marion	273	323	403	515	576
Mercer	273	323	403	515	593
Morgan	273	328	403	515	576
Muskingum	273	323	403	515	576
Ottawa	273	403	464	631	674
Perry	273	323	403	515	576
Preble	280	331	413	529	591
Ross	316	329	403	515	576
Scioto	273	323	403	515	576
Shelby	273	332	444	554	621
Union	273	378	498	623	722
Vinton	273	323	403	515	576
Williams	290	323	403	515	576

O K L A H O M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	291	295	391	545	623	Garfield
Fort Smith, AR-OK MSA	298	302	397	531	557	Sequoyah
Lawton, OK MSA	360	362	461	640	701	Comanche
Oklahoma City, OK MSA	309	337	437	608	680	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	326	390	511	712	839	Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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O K L A H O M A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	244	280	349	465	533
Atoka	244	280	349	465	533
Beckham	248	280	349	465	533
Bryan	244	280	349	465	533
Carter	244	282	352	490	533
Choctaw	244	280	349	465	533
Coal	244	280	349	465	533
Craig	244	280	349	477	564
Delaware	244	280	349	465	543
Ellis	244	280	349	465	533
Grady	267	280	362	492	594
Greer	244	280	349	465	533
Harper	244	280	349	465	533
Hughes	244	280	349	465	533
Jefferson	244	280	349	465	533
Kay	270	286	376	524	614
Kiowa	244	280	349	465	533
Le Flore	244	280	349	465	533
Love	244	280	353	465	533
Mcintosh	244	280	349	465	533
Marshall	244	280	349	465	533
Murray	244	280	349	465	533
Noble	244	280	349	465	533
Okfuskee	244	280	349	465	533
Ottawa	263	280	349	465	533
Payne	282	333	426	588	660
Pontotoc	244	280	349	465	533
Roger Mills	244	280	349	465	533
Stephens	248	280	349	465	555
Tillman	244	280	349	465	533
Washita	244	280	349	465	533
Woodward	244	280	349	465	533

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	244	280	349	465	533
Beaver	244	284	349	465	533
Blaine	244	280	349	465	533
Caddo	244	280	349	465	533
Cherokee	256	289	349	465	541
Cimarron	244	280	349	465	533
Cotton	244	280	349	465	533
Custer	244	280	358	498	575
Dewey	244	280	349	465	533
Garvin	244	280	349	465	537
Grant	244	280	349	465	533
Harmon	244	280	349	465	533
Haskell	244	280	349	465	533
Jackson	244	317	386	507	572
Johnston	244	280	349	465	533
Kingfisher	244	288	357	468	533
Latimer	244	280	349	465	533
Lincoln	262	280	349	465	533
Mccurtain	244	280	349	465	533
Major	244	293	349	485	533
Mayes	244	284	378	477	533
Muskogee	264	297	349	483	533
Nowata	244	280	349	465	533
Okmulgee	248	280	349	465	533
Pawnee	275	280	362	466	533
Pittsburg	244	280	349	465	533
Pushmataha	244	280	349	465	533
Seminole	244	280	349	465	533
Texas	244	290	349	466	533
Washington	244	335	408	541	632
Woods	244	280	349	465	533

O R E G O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	329	451	588	821	949	Lane
Medford-Ashland, OR MSA	338	444	592	823	918	Jackson
Portland-Vancouver, OR-WA PMSA	409	504	621	864	938	Clackamas, Columbia, Multnomah, Washington, Yamhill

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O R E G O N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salem, OR PMSA	363	427	548	754	790	Marion, Polk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	307	364	471	649	723
Clatsop	354	420	549	749	841
Crook	307	364	471	649	723
Deschutes	379	436	583	812	940
Gilliam	307	387	471	649	723
Harney	307	364	471	649	723
Jefferson	307	364	471	649	723
Klamath	307	364	471	649	768
Lincoln	373	378	504	702	762
Malheur	307	364	471	649	723
Sherman	307	364	471	649	723
Umatilla	307	364	471	649	723
Wallowa	307	364	471	649	723
Wheeler	307	364	471	649	723

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	367	475	603	907	963
Coos	307	375	497	693	723
Curry	307	418	554	709	873
Douglas	307	364	471	649	773
Grant	307	364	471	649	723
Hood River	338	380	517	672	794
Josephine	307	373	479	649	757
Lake	307	364	471	649	723
Linn	369	438	568	781	871
Morrow	307	364	471	649	723
Tillamook	307	364	471	649	723
Union	307	364	471	649	723
Wasco	374	462	518	706	792

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	407	552	657	856	962	Carbon, Lehigh, Northampton
Altoona, PA MSA	278	353	423	552	617	Blair
Erie, PA MSA	282	367	433	559	625	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	334	428	549	692	770	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	282	358	431	559	625	Cambria, Somerset
Lancaster, PA MSA	370	454	566	739	795	Lancaster
Newburgh, NY-PA PMSA	533	693	848	1075	1227	Pike
Philadelphia, PA-NJ PMSA	463	570	704	881	1104	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	329	404	487	610	681	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	293	433	534	667	753	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	282	394	472	588	711	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	309	358	431	559	625	Mercer
State College, PA MSA	405	495	613	804	860	Centre
Williamsport, PA MSA	282	360	433	559	625	Lycoming
York, PA MSA	314	431	534	666	746	York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 41

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	278	373	496	642	813
Bedford	278	353	423	552	617
Cameron	278	353	423	552	617
Clearfield	278	353	423	552	617
Crawford	278	353	423	552	617
Forest	278	353	423	552	617
Fulton	278	353	423	552	617
Huntingdon	278	353	423	552	617
Jefferson	278	353	423	552	617
Lawrence	278	353	423	552	617
Mifflin	308	353	423	552	617
Montour	328	353	444	617	728
Potter	278	353	423	552	617
Snyder	334	353	424	552	617
Susquehanna	332	353	423	552	655
Union	335	445	556	696	777
Warren	278	353	423	552	617

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Armstrong	282	372	423	552	694
Bradford	282	357	436	570	624
Clarion	278	353	423	552	617
Clinton	278	353	423	552	617
Elk	278	353	423	552	617
Franklin	278	353	429	590	617
Greene	278	353	423	552	617
Indiana	318	355	423	552	617
Juniata	278	353	423	552	617
Mc Kean	278	355	423	552	617
Monroe	444	529	654	894	998
Northumberland	294	371	453	602	670
Schuylkill	278	353	440	552	617
Sullivan	278	353	423	552	617
Tioga	278	353	423	552	617
Venango	278	353	423	552	617
Wayne	279	431	507	646	831

R H O D E I S L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	486	587	715	895	1023	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	401	545	655	822	1013	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	547	638	819	1025	1147	Middletown town, Newport city, Portsmouth town
Washington	647	728	818	1056	1163	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	350	419	493	670	792	Aiken, Edgefield
Charleston-North Charleston, SC MSA	393	456	524	696	811	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	426	480	540	712	853	York
Columbia, SC MSA	422	464	534	705	811	Lexington, Richland
Florence, SC MSA	319	355	461	576	645	Florence
Greenville-Spartanburg-Anderson, SC MSA	347	420	474	597	702	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	414	421	538	673	754	Horry
Sumter, SC MSA	337	374	425	581	689	Sumter

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Abbeville	283	331	402	516	590	Allendale	283	331	402	516	590
Bamberg	283	331	402	516	590	Barnwell	298	331	404	516	590
Beaufort	405	497	572	714	800	Calhoun	283	331	402	516	590
Chester	283	331	402	516	590	Chesterfield	283	331	402	516	590
Clarendon	283	331	402	516	590	Colleton	283	331	402	516	590
Darlington	283	331	402	516	590	Dillon	283	331	402	516	590
Fairfield	283	380	433	540	605	Georgetown	283	360	405	516	615
Greenwood	284	331	402	516	590	Hampton	283	331	402	516	590
Jasper	283	331	402	516	590	Kershaw	283	331	402	516	590
Lancaster	297	332	402	516	590	Laurens	283	331	402	516	590
Lee	283	331	402	516	590	Mccormick	283	331	402	516	629
Marion	283	331	402	516	590	Marlboro	283	331	402	516	590
Newberry	283	331	402	516	590	Oconee	283	331	402	516	590
Orangeburg	283	331	402	516	590	Saluda	283	331	402	516	590
Union	283	331	402	516	590	Williamsburg	283	331	402	516	590

S O U T H D A K O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	340	404	538	732	885	Pennington
Sioux Falls, SD MSA	328	454	575	728	836	Lincoln, Minnehaha

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aurora	247	330	411	544	629
Bennett	247	327	411	544	629
Brookings	265	419	465	627	740
Brule	247	327	411	544	629
Butte	284	388	516	674	795
Charles Mix	247	327	411	544	629
Clay	247	327	411	544	675
Corson	247	327	411	544	629
Davison	259	327	411	551	629
Deuel	247	327	411	544	629
Douglas	274	327	411	544	629
Fall River	281	327	411	544	629
Grant	247	327	411	544	629
Haakon	247	335	411	544	629
Hand	247	327	411	544	629
Harding	247	335	411	544	629
Hutchinson	247	327	411	544	629
Jackson	247	332	411	544	629
Jones	247	327	411	544	629
Lake	247	332	411	544	629
Lyman	247	327	411	544	629
Mcpherson	247	327	411	544	629
Meade	347	391	522	683	807
Miner	247	332	411	544	629
Perkins	247	327	411	544	629
Roberts	247	327	411	544	629
Shannon	247	332	411	544	629
Stanley	247	335	411	544	629
Todd	273	327	411	544	629
Turner	247	327	411	544	629
Walworth	247	335	411	544	629
Ziebach	247	327	411	544	629

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beadle	247	327	411	544	629
Bon Homme	274	327	411	544	629
Brown	247	327	411	544	629
Buffalo	247	327	411	544	635
Campbell	247	327	411	544	629
Clark	247	327	411	544	629
Codington	247	327	411	544	629
Custer	247	327	411	544	629
Day	275	327	411	544	629
Dewey	247	327	411	544	629
Edmunds	247	327	411	544	629
Faulk	247	327	433	544	629
Gregory	248	327	411	544	629
Hamlin	247	327	411	544	629
Hanson	251	343	457	574	642
Hughes	272	327	433	571	675
Hyde	247	333	411	544	629
Jerauld	247	330	411	544	629
Kingsbury	270	327	411	544	629
Lawrence	282	407	512	702	794
Mccook	247	327	411	544	629
Marshall	291	327	411	544	629
Mellette	294	332	411	544	629
Moody	247	327	411	544	629
Potter	247	327	411	544	629
Sanborn	247	327	411	544	629
Spink	269	327	418	544	629
Sully	247	327	411	544	629
Tripp	247	327	411	544	629
Union	260	327	411	544	629
Yankton	247	327	411	544	629

T E N N E S S E E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	357	417	500	646	737	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	331	371	434	593	609	Montgomery
Jackson, TN MSA	257	338	453	627	631	Madison, Chester

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

T E N N E S S E E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	297	355	438	570	675	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	297	366	459	612	736	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	340	395	465	646	679	Fayette, Shelby, Tipton
Nashville, TN MSA	417	498	614	837	940	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bedford	235	302	369	465	517
Bledsoe	235	275	348	457	512
Campbell	237	275	348	457	512
Carroll	235	285	348	457	512
Clay	239	275	348	457	512
Coffee	235	328	368	512	583
Cumberland	248	275	360	503	512
Dekalb	235	275	348	457	512
Fentress	235	275	348	457	512
Gibson	235	275	348	457	512
Grainger	239	275	348	457	512
Grundy	235	275	348	457	512
Hancock	235	275	348	457	512
Hardin	235	275	348	457	512
Henderson	235	275	348	457	512
Hickman	277	281	373	492	522
Humphreys	235	286	348	457	512
Jefferson	256	275	356	457	567
Lake	235	275	348	457	512
Lawrence	235	275	348	457	512
Lincoln	235	275	351	457	512
Mcnairy	235	275	348	457	512
Marshall	276	301	392	496	551
Meigs	235	275	348	457	512
Moore	235	275	348	457	512
Obion	272	276	353	468	512
Perry	235	277	348	457	512
Polk	235	275	348	457	512
Rhea	235	293	348	462	512
Scott	235	275	348	457	512
Smith	235	275	348	457	512
Trousdale	235	288	383	481	630
Warren	261	275	355	457	512

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	253	288	348	457	512
Bradley	235	296	395	535	650
Cannon	235	275	348	457	512
Claiborne	235	275	348	457	512
Cocke	235	275	348	457	512
Crockett	235	275	348	457	512
Decatur	235	275	348	457	512
Dyer	293	297	396	496	618
Franklin	246	275	348	478	562
Giles	235	299	370	463	518
Greene	235	275	348	457	512
Hamblen	235	276	362	482	512
Hardeman	235	275	348	457	512
Haywood	247	286	382	478	535
Henry	235	275	348	457	512
Houston	235	275	348	457	512
Jackson	235	275	348	457	512
Johnson	235	275	348	457	512
Lauderdale	235	275	350	457	512
Lewis	235	275	348	457	512
Mcminn	235	275	348	459	512
Macon	235	275	348	457	512
Maury	337	344	457	573	639
Monroe	235	275	348	457	512
Morgan	235	275	348	457	512
Overton	235	275	348	457	512
Pickett	235	275	348	457	512
Putnam	285	288	370	509	548
Roane	253	275	348	467	562
Sequatchie	235	275	348	457	512
Stewart	235	275	348	457	512
Van Buren	235	275	348	457	512
Wayne	235	275	348	457	512

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Weakley	254	275	348	457	512
White	239	275	348	457	512

T E X A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	327	365	471	635	772	Taylor
Amarillo, TX MSA	277	350	436	608	717	Potter, Randall
Austin-San Marcos, TX MSA	427	516	687	954	1128	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	316	382	466	617	654	Hardin, Jefferson, Orange
Brazoria, TX PMSA	434	484	605	843	992	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	332	419	523	655	817	Cameron
Bryan-College Station, TX MSA	370	430	544	758	894	Brazos
Corpus Christi, TX MSA	346	425	543	739	873	Nueces, San Patricio
Dallas, TX	471	541	694	961	1136	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	390	437	518	718	850	El Paso
Fort Worth-Arlington, TX PMSA	403	438	569	793	936	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	426	438	550	763	900	Galveston
Henderson County, TX	287	341	417	569	683	Henderson
Houston, TX PMSA	404	454	588	818	964	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	389	405	513	714	784	Bell, Coryell
Laredo, TX MSA	315	363	477	596	670	Webb
Longview-Marshall, TX MSA	312	352	432	589	643	Gregg, Harrison, Upshur
Lubbock, TX MSA	299	378	491	683	757	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	277	379	434	542	608	Hidalgo
Odessa-Midland, TX MSA	299	345	461	641	743	Ector, Midland
San Angelo, TX MSA	277	354	430	590	696	Tom Green
San Antonio, TX MSA	365	421	545	758	896	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	277	379	458	585	700	Grayson
Texarkana, TX-Texarkana, AR MSA	302	369	450	594	630	Bowie
Tyler, TX MSA	347	383	468	649	686	Smith
Victoria, TX MSA	343	347	438	609	686	Victoria
Waco, TX MSA	302	370	487	648	682	Mclennan
Wichita Falls, TX MSA	332	372	448	597	704	Archer, Wichita

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	326	367	412	573	579
Angelina	296	343	387	537	633
Armstrong	271	314	410	514	579
Austin	271	314	378	518	579
Bandera	291	314	378	514	579
Bee	271	314	378	507	579
Borden	271	314	378	507	579
Brewster	271	314	378	511	612
Brooks	271	314	378	507	579
Burleson	271	314	397	537	654
Calhoun	290	314	378	523	619
Camp	367	372	465	582	650
Cass	271	314	378	507	579
Cherokee	303	315	385	507	579
Clay	271	320	378	507	590
Coke	271	314	378	507	579
Collingsworth	271	314	378	507	579
Comanche	271	314	378	507	579
Cooke	294	314	398	541	600
Crane	271	314	378	507	579
Crosby	271	314	378	507	579
Dallam	271	314	378	507	579
Deaf Smith	271	314	378	507	588
Dewitt	271	314	378	507	579
Dimmit	271	314	378	507	579
Duval	271	314	378	507	579
Edwards	271	314	378	507	579
Falls	271	314	378	507	579
Fayette	271	314	378	507	579
Floyd	271	314	378	507	579
Franklin	271	314	378	523	579
Frio	271	314	378	507	579
Garza	271	314	378	507	579
Glasscock	271	314	378	507	579
Gonzales	271	314	378	507	579
Grimes	271	314	378	511	603
Hall	271	314	378	507	579
Hansford	271	314	378	507	594
Hartley	271	314	378	507	579
Hemphill	271	349	391	546	579

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Andrews	271	314	378	507	579
Aransas	271	334	445	619	623
Atascosa	271	314	378	507	579
Bailey	271	314	378	507	579
Baylor	271	314	378	507	579
Blanco	271	314	400	558	587
Bosque	271	314	378	507	579
Briscoe	271	314	378	507	579
Brown	271	314	379	509	622
Burnet	271	314	386	536	627
Callahan	271	314	378	507	579
Carson	271	314	378	507	579
Castro	273	314	378	507	579
Childress	271	314	378	507	579
Cochran	271	314	378	507	579
Coleman	271	314	378	507	579
Colorado	271	314	378	507	579
Concho	271	314	378	507	579
Cottle	271	314	378	507	579
Crockett	271	314	378	507	579
Culberson	271	314	378	507	579
Dawson	271	314	378	507	579
Delta	271	325	378	507	579
Dickens	271	314	378	507	579
Donley	271	314	378	507	579
Eastland	271	314	378	507	579
Erath	281	319	412	533	579
Fannin	275	314	378	509	579
Fisher	271	314	378	507	579
Foard	271	314	378	507	579
Freestone	271	314	378	507	579
Gaines	277	314	378	507	579
Gillespie	271	341	443	609	621
Goliad	271	314	378	507	579
Gray	297	314	403	507	598
Hale	271	314	378	507	579
Hamilton	271	314	378	507	579
Hardeman	271	314	378	507	579
Haskell	271	314	378	507	579
Hill	271	314	378	507	579

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	277	324	378	512	579
Houston	271	314	378	507	579
Hudspeth	327	369	412	517	679
Irion	271	314	378	507	579
Jackson	271	315	378	507	579
Jeff Davis	271	314	378	507	579
Jim Wells	271	314	378	507	586
Karnes	271	314	378	507	579
Kenedy	271	314	378	507	579
Kerr	271	351	439	611	720
King	271	314	378	507	579
Kleberg	330	341	416	582	685
Lamar	271	337	396	554	654
Lampasas	271	314	378	514	607
Lavaca	271	314	378	507	579
Leon	271	348	390	507	642
Lipscomb	271	314	378	507	579
Llano	271	349	465	583	764
Lynn	271	314	378	507	579
Mcmullen	271	314	378	507	579
Marion	271	314	378	507	600
Mason	271	314	378	507	579
Maverick	271	314	378	507	579
Menard	271	314	378	507	579
Mills	271	314	378	507	579
Montague	271	314	378	507	579
Morris	271	314	378	507	579
Nacogdoches	286	345	448	560	661
Newton	271	314	378	507	579
Ochiltree	271	314	378	507	579
Palo Pinto	271	314	378	507	602
Parmer	271	314	378	507	579
Polk	303	331	385	518	629
Rains	271	351	425	589	594
Real	271	314	378	507	579
Reeves	271	314	378	507	579
Roberts	271	317	378	507	579
Runnels	271	314	378	507	579
Sabine	271	314	378	507	579
San Jacinto	284	321	378	507	592

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	317	340	400	558	600
Howard	289	314	378	511	579
Hutchinson	271	314	391	546	644
Jack	271	314	378	507	579
Jasper	271	314	386	514	631
Jim Hogg	271	314	378	507	579
Jones	271	314	378	507	579
Kendall	271	396	445	619	731
Kent	271	314	378	507	579
Kimble	271	314	412	516	579
Kinney	271	314	378	507	579
Knox	271	314	378	507	579
Lamb	271	314	378	507	579
La Salle	271	314	378	507	579
Lee	308	345	388	542	608
Limestone	271	314	378	507	579
Live Oak	271	314	378	507	579
Loving	271	314	378	507	579
Mcculloch	279	314	378	507	579
Madison	271	323	378	507	596
Martin	271	314	378	507	579
Matagorda	314	342	425	589	594
Medina	271	314	378	507	579
Milam	271	314	378	507	579
Mitchell	271	314	378	507	579
Moore	271	319	378	507	588
Motley	271	314	378	507	579
Navarro	325	341	411	521	579
Nolan	279	314	378	507	579
Oldham	271	314	410	514	601
Panola	271	320	378	507	579
Pecos	271	314	378	511	603
Presidio	271	314	378	507	579
Reagan	345	351	467	586	767
Red River	271	349	391	507	579
Refugio	271	314	378	507	579
Robertson	271	359	401	507	579
Rusk	283	314	378	507	579
San Augustine	271	314	378	507	579
San Saba	271	314	378	507	579

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T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Schleicher	271	314	378	507	579
Shackelford	271	314	378	507	579
Sherman	271	314	378	507	579
Starr	271	314	378	507	579
Sterling	271	314	378	507	579
Sutton	271	314	378	507	579
Terrell	271	314	378	507	579
Throckmorton	271	314	378	507	579
Trinity	282	319	378	507	579
Upton	271	314	378	507	579
Val Verde	271	360	424	529	624
Walker	366	389	476	632	667
Washington	337	343	459	573	753
Wheeler	271	314	378	507	579
Willacy	271	314	378	507	579
Wise	271	317	380	530	579
Yoakum	271	357	439	549	720
Zapata	271	314	378	507	579

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	271	314	392	548	646
Shelby	271	314	378	507	579
Somervell	311	349	391	537	579
Stephens	271	314	378	507	579
Stonewall	271	314	378	507	579
Swisher	271	314	378	507	579
Terry	271	314	378	507	579
Titus	288	358	406	561	579
Tyler	271	314	404	507	665
Uvalde	271	314	378	507	579
Van Zandt	290	314	392	535	646
Ward	271	314	378	507	579
Wharton	271	314	378	507	579
Wilbarger	271	314	378	507	597
Winkler	271	314	378	507	579
Wood	271	314	391	546	644
Young	271	314	378	507	586
Zavala	271	314	378	507	579

U T A H

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County, UT	298	366	458	613	739	Kane
Provo-Orem, UT MSA	412	435	538	746	882	Utah
Salt Lake City-Ogden, UT MSA	358	415	526	732	858	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaver	289	355	444	595	716
Cache	323	396	497	665	800
Daggett	315	430	572	717	803
Emery	289	355	444	595	716
Grand	289	355	444	595	716
Juab	289	355	444	595	716
Morgan	289	355	444	595	716
Rich	289	355	444	595	716
Sanpete	289	355	444	595	716
Summit	428	528	660	890	1082
Uintah	289	355	444	595	716
Washington	357	439	583	779	954

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	323	358	448	600	722
Carbon	311	355	444	595	716
Duchesne	289	355	444	595	716
Garfield	289	355	444	595	716
Iron	295	402	501	626	736
Millard	289	355	444	595	716
Piute	289	355	444	595	716
San Juan	289	355	444	595	716
Sevier	293	355	444	595	716
Tooele	289	369	444	595	716
Wasatch	289	369	444	595	716
Wayne	289	355	444	595	716

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

V E R M O N T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	419	513	684	933	1126	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	413	499	580	808	907	
Bennington	367	462	595	756	880	
Caledonia	325	388	474	598	686	
Chittenden	379	614	692	960	1132	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	318	382	474	598	686	
Franklin	342	386	474	602	692	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	318	382	474	598	686	Alburg town, Isle La Motte town, North Hero town
Lamoille	330	458	546	749	859	
Orange	343	450	553	731	819	
Orleans	318	382	474	598	686	
Rutland	370	481	588	737	825	
Washington	356	441	595	744	834	
Windham	402	465	617	783	862	
Windsor	433	489	612	785	931	

V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	419	495	634	842	944	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	302	425	550	755	771	Clarke
Culpeper County, VA	371	542	630	833	997	Culpeper
Danville, VA MSA	286	360	423	568	685	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	297	355	438	570	675	Scott, Washington, Bristol city
King George County, VA	365	485	545	757	763	King George
Lynchburg, VA MSA	340	374	432	568	685	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	425	478	566	789	927	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	462	524	609	848	1000	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	288	360	467	599	747	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	295	403	538	705	881	Warren
Washington, DC-MD-VA	609	692	812	1106	1333	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Accomack	334	361	422	560	675	Alleghany	294	355	417	560	675
Amelia	282	355	417	560	675	Appomattox	282	355	417	560	675
Augusta	282	365	443	583	710	Bath	282	355	417	560	675
Bland	282	355	417	560	675	Brunswick	282	355	417	560	675
Buchanan	282	355	417	560	675	Buckingham	282	355	417	560	675
Caroline	399	404	540	717	756	Carroll	282	355	417	560	675
Charlotte	282	355	417	560	675	Craig	282	355	417	560	675
Cumberland	282	386	448	560	675	Dickenson	282	355	417	560	675
Essex	282	396	468	651	768	Floyd	282	355	417	560	675
Franklin	282	355	417	560	675	Frederick	382	441	530	726	870
Giles	282	355	417	560	675	Grayson	282	355	417	560	675
Greensville	282	365	417	560	675	Halifax	282	355	417	560	675
Henry	282	355	417	560	675	Highland	282	355	417	560	675
King and Queen	282	404	455	569	675	King William	282	386	433	560	675
Lancaster	352	395	446	594	723	Lee	282	355	417	560	675
Louisa	282	367	452	628	675	Lunenburg	282	355	417	560	675
Madison	283	420	473	592	775	Mecklenburg	282	355	417	560	675
Middlesex	282	357	417	560	675	Montgomery	290	380	447	621	734
Nelson	282	355	417	560	675	Northampton	282	355	417	560	675
Northumberland	282	355	417	560	675	Nottoway	282	355	417	560	675
Orange	312	425	569	791	928	Page	327	369	417	560	675
Patrick	282	355	417	560	675	Prince Edward	315	357	417	560	675
Pulaski	282	355	417	560	675	Rappahannock	286	463	520	722	852
Richmond	282	375	421	560	692	Rockbridge	282	355	417	560	675
Rockingham	282	390	494	677	793	Russell	282	355	417	560	675
Shenandoah	371	380	469	649	737	Smyth	282	355	417	560	675
Southampton	282	355	417	560	675	Surry	293	355	417	560	675
Sussex	282	355	417	560	675	Tazewell	282	355	417	560	675

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	282	380	506	636	823
Wythe	295	355	417	560	675
Wise	282	355	417	560	675

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	389	505	672	928	1101	Whatcom
Bremerton, WA PMSA	401	462	599	809	984	Kitsap
Olympia, WA PMSA	412	506	632	870	1025	Thurston
Portland-Vancouver, OR-WA PMSA	409	504	621	864	938	Clark
Richland-Kennewick-Pasco, WA MSA	485	556	665	926	1087	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	461	561	710	986	1165	Island, King, Snohomish
Spokane, WA MSA	311	424	512	695	779	Spokane
Tacoma, WA PMSA	356	425	566	787	889	Pierce
Yakima, WA MSA	351	432	535	718	749	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	311	373	484	639	709
Chelan	311	373	484	639	709
Columbia	311	373	484	639	709
Douglas	364	384	484	639	709
Garfield	311	373	484	639	709
Grays Harbor	318	373	489	660	761
Kittitas	311	373	484	639	709
Lewis	311	373	484	639	709
Mason	353	438	539	708	761
Pacific	311	373	484	639	709
San Juan	384	525	700	922	1097
Skamania	311	373	484	639	709
Wahkiakum	311	373	484	639	709
Whitman	335	381	508	706	835
Asotin	311	373	484	639	709
Clallam	363	449	571	734	802
Cowlitz	349	390	503	699	709
Ferry	311	373	484	639	709
Grant	334	373	484	639	709
Jefferson	311	402	494	670	709
Klickitat	311	373	484	639	709
Lincoln	311	373	484	639	709
Okanogan	311	373	484	639	709
Pend Oreille	311	373	484	639	851
Skagit	424	518	611	763	853
Stevens	311	373	484	639	709
Walla Walla	311	373	484	648	766

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	384	410	483	603	678	Berkeley
Charleston, WV MSA	252	342	434	596	652	Kanawha, Putnam
Cumberland, MD-WV MSA	328	395	488	645	737	Mineral
Huntington-Ashland, WV-KY-OH MSA	297	348	429	547	602	Cabell, Wayne
Jefferson County, WV	385	426	527	685	776	Jefferson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 52

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	299	358	410	531	576	Wood
Steubenville-Weirton, OH-WV MSA	279	329	412	526	586	Brooke, Hancock
Wheeling, WV-OH MSA	305	333	412	526	586	Marshall, Ohio

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	250	317	355	457	531
Braxton	250	305	355	457	531
Clay	250	305	355	457	531
Fayette	250	305	355	457	531
Grant	250	305	355	457	531
Hampshire	250	305	357	470	531
Harrison	275	338	390	487	584
Lewis	250	334	355	457	531
Logan	256	305	355	460	544
Marion	250	315	389	499	575
Mercer	250	305	355	457	531
Monongalia	314	348	424	584	691
Morgan	324	366	410	514	574
Pendleton	250	305	355	457	531
Pocahontas	250	305	355	457	531
Raleigh	259	305	355	457	535
Ritchie	250	305	355	457	531
Summers	250	305	355	457	531
Tucker	250	305	355	457	531
Upshur	250	305	357	457	531
Wetzel	283	305	383	479	604
Wyoming	250	305	355	457	531

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Boone	250	305	355	457	531
Calhoun	250	305	355	457	531
Doddridge	259	305	355	457	531
Gilmer	275	305	355	457	531
Greenbrier	250	345	368	459	531
Hardy	250	305	355	457	531
Jackson	250	312	355	486	531
Lincoln	250	305	355	457	531
Mcdowell	250	305	355	457	531
Mason	250	305	355	457	546
Mingo	250	305	355	457	538
Monroe	250	305	355	457	531
Nicholas	250	305	355	457	531
Pleasants	258	305	355	457	545
Preston	250	320	355	457	531
Randolph	250	305	355	457	531
Roane	250	305	355	457	531
Taylor	306	330	361	457	531
Tyler	250	305	373	468	531
Webster	250	305	355	457	531
Wirt	250	305	355	457	531

W I S C O N S I N

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	311	383	486	614	707	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	272	351	451	602	701	Douglas
Eau Claire, WI MSA	335	365	479	615	693	Chippewa, Eau Claire
Green Bay, WI MSA	340	375	481	668	672	Brown
Janesville-Beloit, WI MSA	342	432	535	670	751	Rock
Kenosha, WI PMSA	364	452	555	763	858	Kenosha
La Crosse, WI-MN MSA	276	356	453	606	734	La Crosse
Madison, WI MSA	425	535	646	898	1059	Dane

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	361	472	593	743	830	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	392	504	644	872	987	Pierce, St. Croix
Racine, WI PMSA	320	397	524	677	741	Racine
Sheboygan, WI MSA	297	382	467	583	723	Sheboygan
Wausau, WI MSA	364	377	472	642	712	Marathon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	270	315	401	512	577
Barron	270	315	401	512	577
Buffalo	270	315	401	512	577
Clark	270	315	401	512	577
Crawford	270	315	401	512	577
Door	270	334	415	534	648
Florence	270	315	401	512	577
Forest	270	315	401	512	577
Green	275	315	401	540	577
Iowa	280	315	401	527	577
Jackson	270	315	401	512	577
Juneau	276	315	401	512	577
Lafayette	275	315	401	512	577
Lincoln	270	315	401	512	577
Marinette	270	315	401	512	577
Menominee	270	315	401	512	577
Oconto	270	315	401	512	577
Pepin	270	315	401	512	577
Portage	328	347	450	561	695
Richland	270	315	401	512	577
Sauk	316	326	436	543	609
Shawano	275	315	401	512	577
Trempealeau	270	315	401	512	577
Vilas	270	315	401	512	577
Washburn	270	315	401	512	577
Waushara	270	315	401	512	577

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	295	326	401	512	577
Bayfield	270	315	401	512	577
Burnett	270	315	401	512	577
Columbia	270	321	422	553	620
Dodge	342	347	456	571	638
Dunn	270	315	412	551	680
Fond du Lac	314	425	503	684	706
Grant	274	315	401	512	577
Green Lake	270	315	401	512	577
Iron	270	315	401	512	577
Jefferson	270	358	465	601	657
Kewaunee	270	315	401	512	577
Langlade	270	315	401	512	577
Manitowoc	273	315	401	512	577
Marquette	270	315	401	512	577
Monroe	270	315	401	535	577
Oneida	270	316	401	516	618
Polk	270	315	408	512	577
Price	270	315	401	512	577
Rusk	270	315	401	512	577
Sawyer	270	315	401	512	577
Taylor	270	315	401	512	577
Vernon	270	315	401	512	577
Walworth	282	396	515	671	753
Waupaca	270	315	401	512	607
Wood	293	335	416	522	586

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W Y O M I N G

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	308	357	456	625	739	Natrona
Cheyenne, WY MSA	348	436	582	744	904	Laramie

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Albany	299	375	500	695	821
Campbell	308	327	420	559	660
Converse	284	327	420	557	640
Fremont	284	327	420	557	640
Hot Springs	284	327	420	557	640
Lincoln	284	327	420	557	640
Park	284	327	420	557	647
Sheridan	284	327	420	557	647
Sweetwater	296	327	420	559	660
Uinta	298	327	420	558	674
Weston	284	327	420	557	640

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	284	327	420	557	640
Carbon	284	327	420	557	640
Crook	284	327	420	557	640
Goshen	284	327	420	557	640
Johnson	284	327	420	557	640
Niobrara	284	327	420	557	640
Platte	284	327	420	557	640
Sublette	317	357	420	557	640
Teton	380	484	642	864	942
Washakie	284	327	420	557	640

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	670	806	954	1196	1346

P U E R T O R I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	206	251	298	371	418	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	223	270	317	398	447	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	260	313	370	465	517	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	245	298	354	439	495	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	243	297	350	437	491	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	327	399	471	589	661	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio.....	197	244	285	360	399
Arroyo Municipio.....	197	244	285	360	399
Ciales Municipio.....	197	244	285	360	399
Culebra Municipio.....	197	244	285	360	399
Guayama Municipio.....	197	244	285	360	399
Jayuya Municipio.....	197	244	285	360	399
Lares Municipio.....	197	244	285	360	399
Maricao Municipio.....	197	244	285	360	399
Orocovis Municipio.....	197	244	285	360	399
Quebradillas Municipio..	197	244	285	360	399
Salinas Municipio.....	197	244	285	360	399
Santa Isabel Municipio..	197	244	285	360	399
Vieques Municipio.....	197	244	285	360	399

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aibonito Municipio.....	197	244	285	360	399
Barranquitas Municipio..	197	244	285	360	399
Coamo Municipio.....	197	244	285	360	399
Guanica Municipio.....	197	244	285	360	399
Isabela Municipio.....	197	244	285	360	399
Lajas Municipio.....	197	244	285	360	399
Las Marias Municipio....	197	244	285	360	399
Maunabo Municipio.....	197	244	285	360	399
Patillas Municipio.....	197	244	285	360	399
Rincon Municipio.....	197	244	285	360	399
San Sebastian Municipio.	197	244	285	360	399
Utuado Municipio.....	197	244	285	360	399

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Croix.....	471	572	674	842	944

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Johns/St. Thomas....	605	734	864	1080	1209

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For exampl the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 09169

SCHEDULE D - FY 1998 40TH PERCENTILE FAIR MARKET RENTS
FOR MANUFACTURED HOME SPACES IN THE
SECTION 8 CERTIFICATE PROGRAM

Area Name	SPACE RENT
California	
Mendocino County, CA	$238
Orange County, CA PMSA	$451
San Diego, CA MSA	$396
Vallejo-Fairfield-Napa, CA PMSA	$300
Colorado	
Boulder-Longmont, CO PMSA	$314
Denver, CO PMSA	$299
Delaware	
Dover, DE MSA	$172
Sussex County, DE	$119
Maryland	
Hagerstown, MD PMSA	$213
St. Mary's County, MD	$260
Minnesota	
Minneapolis-St. Paul, MN-WI MSA	$258
New York	
Dutchess County, NY PMSA	$348
Jamestown, NY MSA	$175
Newburgh, NY-PA PMSA	$326
Rochester, NY MSA	$244
Utica-Rome, NY MSA	$218
Tompkins County, NY	$204
Oregon	
Salem, OR PMSA	$217
Portland-Vancouver, OR-WA MSA	$262
Benton County, OR	$207
Linn County, OR	$187
Utah	
Provo-Orem, UT MSA	$215
Vermont	
Washington County, VT	$207
West Virginia	
Berkeley County, WV	$140
Jefferson County, WV	$143
Morgan County, WV	$138

REV. 4/7/97

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federal register

Friday
September 26, 1997

Part VI

Department of Justice

Bureau of Prisons

28 CFR Parts 523, 541, and 544
Good Conduct Time; Interim Rule
Inmate Discipline and Good Conduct Time; Final Rule
Literacy Program; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP–1032–I]

RIN 1120–AA62

Good Conduct Time

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is issuing interim regulations for the awarding of good conduct time pursuant to the Prison Litigation Reform Act of 1995 (PLRA). Pursuant to the PLRA, in awarding good conduct time credit, the Bureau shall consider whether the inmate, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or equivalent degree. This interim rule provides that an inmate subject to the PLRA shall be awarded the full 54 days credit for good conduct time (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a General Educational Development (GED) credential. The interim rule further provides that an inmate subject to the PLRA shall be awarded 42 days credit for good conduct time per year (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential. The amount of good conduct time awarded is also subject to disciplinary disallowance.

DATES: Effective November 3, 1997; comments must be submitted by November 25, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting interim regulations for the awarding of good conduct time for certain inmates. The awarding and vesting of good conduct time at a rate of 54 days per year (prorated when the time served by the inmate for the sentence during the year is less than a full year) had been clearly stated by statute since the implementation of the Sentencing Reform Act of 1984. The actual awarding of good conduct time occurs annually on the date marking the anniversary of the inmate's completion of one year in Federal custody. The awarding of good conduct time is also subject to disciplinary disallowance (see Tables 3 through 6 in 28 CFR 541.13).

Further statutory mandates on vesting good conduct time were added by the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and by the PLRA. Under the Sentencing Reform Act of 1984, good conduct time vested annually. Section 20412 of VCCLEA required, among other things, that credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree. Section 809 of the PLRA requires, among other things, that credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody, and that in awarding credit, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. This interim regulation is being issued for the purpose of implementing the discretionary provision of the PLRA pertaining to the awarding of good conduct time.

Regulations for the Bureau's literacy program have been revised to include a definition of ''satisfactory progress'' (28 CFR 544.73(b)). The revised regulations are published elsewhere in today's **Federal Register**. Pursuant to that definition, an inmate shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that the inmate refuses to enroll in the literacy program, that the inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 hours of the inmate's most recent enrollment in the literacy program, or that the inmate has withdrawn from the literacy program. An inmate who receives a progress rating that the inmate is not making satisfactory progress shall be deemed to be making satisfactory progress only after the inmate has received a new progress assignment that the inmate has been continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate has committed a prohibited act that occurred in a literacy classroom during the last 240 instructional hours of the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress.

An inmate who is subject to the requirements of VCCLEA (i.e., an inmate who has been convicted of an offense committed on or after September 13, 1994 but before April 26, 1996) therefore may have his or her good conduct time vest if he or she possesses a high school diploma, a GED credential, or is making satisfactory progress toward attaining a GED. An inmate who is subject to the PLRA (i.e., an inmate who has been convicted of an offense committed on or after April 26, 1996) is awarded credit upon Bureau consideration whether the inmate has earned or is making satisfactory progress toward earning a high school diploma or an equivalent degree. By statute, good conduct time awarded to such inmate does not vest until the inmate is released from custody. The Bureau has determined (see new § 523.20) that when a PLRA inmate has not earned a high school diploma and is not making satisfactory progress toward earning a GED credential, the inmate shall be awarded 42 days of good conduct time rather than 54 days (prorated when the time served by the inmate during the year is less than a full year). The amount of good conduct time to be awarded is also subject to disciplinary disallowance.

The Bureau is publishing this regulation as an interim rule in order to solicit public comment. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received before expiration of the deadline will be considered before the rule is finalized. Comments received after expiration of the deadline will be considered to the extent practicable.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 523

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 523 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 523—COMPUTATION OF SENTENCE

1. The authority citation for 28 CFR part 523 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984 as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. A new subpart C, consisting of § 523.20, is added to read as follows:

Subpart C—Good Conduct Time

§ 523.20 Good conduct time.

Pursuant to 18 U.S.C. 3624(b), as in effect for offenses committed on or after November 1, 1987 but before April 26, 1996, an inmate earns 54 days credit toward service of sentence (good conduct time credit) for each year served. This amount is prorated when the time served by the inmate for the sentence during the year is less than a full year. The amount to be awarded is also subject to disciplinary disallowance (see Tables 3 through 6 in § 541.13 of this chapter). Pursuant to 18 U.S.C. 3624(b), as in effect for offenses committed on or after April 26, 1996, the Bureau shall consider whether the inmate has earned, or is making satisfactory progress (see § 544.73(b) of this chapter) toward earning a General Educational Development (GED) credential before awarding good conduct time credit.

(a) When considering good conduct time for an inmate serving a sentence for an offense committed on or after April 26, 1996, the Bureau shall award:

(1) 54 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a GED credential or high school diploma; or

(2) 42 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential or high school diploma.

(b) The amount of good conduct time awarded for the year is also subject to disciplinary disallowance (see Tables 3 through 6 in § 541.13 of this chapter).

[FR Doc. 97–25533 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[BOP–1040–F]

RIN 1120–AA34

Inmate Discipline and Good Conduct Time

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is implementing provisions of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and the Prison Litigation Reform Act of 1995 (PLRA) which make the earning of good conduct time contingent upon exemplary compliance with institution regulations. The list of sanctions which may be imposed by the Discipline Hearing Officer in instances where an inmate subject to either of these two Acts has been determined to be not in compliance with institution regulations is accordingly being modified to achieve this purpose.

EFFECTIVE DATES: November 3, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) is amending its regulations on inmate discipline (28 CFR part 541, subpart B). Section 20405 of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 3624(b)) provides that a prisoner who is serving a term of imprisonment of more than one year for a crime of violence, other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to the determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner.

A proposed rule on this subject was published in the **Federal Register** on October 26, 1995. In that document the Bureau defined exemplary compliance with institutional disciplinary regulations in terms of the number of times an inmate was found to have committed a prohibited act. Accordingly, the Bureau proposed changes to 28 CFR 541.13(a) (1), (2), (3), and (4), (f), and 541.14(a). For ease of reference, Tables 3, 4 and 5 were revised in their entirety to incorporate changes to sanctions B and B.1. Under the proposed revision, when a VCCLEA inmate who has been rated as violent (i.e., an inmate who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) is found to have committed a greatest or high category offense during incarceration, the Discipline Hearing Officer (DHO) must, as a minimum, impose a sanction disallowing all Good Conduct Time (GCT) for the evaluation period. This means a loss of 54 days GCT. Sanctions to be imposed for such inmates found to have committed moderate or low category offenses during incarceration were also modified, though in neither case would all available GCT be necessarily disallowed for a single incident. An accumulation of prohibited act determinations, however, could result in such a loss.

The comment period for the proposed rule ended on December 26, 1995. The Bureau received one comment on the proposed rule. The commenter raised two objections: the proposed rule appeared to create inequities in inmate discipline sanctions based upon a difference of commitment date, and the proposed rule would greatly increase the workload of the Discipline Hearing Officer (DHO).

With respect to the apparent creation of inequities in inmate discipline sanctions based on commitment date, the Bureau notes that the statutory authority is explicit as to the consequences of less than exemplary behavior by VCCLEA inmates rated as violent. Since the statutory change potentially affects the loss of good conduct time, the changes can only be

applied to persons sentenced for an offense committed after the effective date of the Act. The statute has not been implemented retroactively. The distinction, then, is based both on date of the commitment offense and on the inmate's rating as a violent offender. What was at issue in the proposed rule is what constitutes exemplary compliance with institutional disciplinary regulations. The proposed rule procedurally defined this as the avoidance by the inmate of committing greatest or high category offenses. The proposed application of intermediate sanctions based on the commission of moderate or low category offenses by a VCCLEA inmate rated as violent fell within the upper limit of sanctions available for other inmates. The Bureau believes that the proposed application was supportive of the goal of maintaining exemplary compliance by VCCLEA inmates rated as violent. As noted below, however, the Bureau is making an adjustment in its determination of exemplary compliance in order to avoid disparity in the application of exemplary compliance for all inmates in accordance with the provisions of the Prison Litigation Reform Act of 1995 (PLRA).

With respect to a possible increase in the DHO's workload resulting from Unit Discipline Committee referrals of moderate and low category offenses, the Bureau believes that the DHO needs to be aware of the discipline record of VCCLEA inmates rated as violent and, if needed, that additional resources can be considered to address an excessive increase in the DHO's workload.

Section 809 of the PLRA amended 18 U.S.C. 3624 to require all inmates, not only those convicted of a crime of violence, to demonstrate exemplary compliance with institution disciplinary regulations in order to earn good conduct time. The Bureau believes that, having proposed an exemplary compliance standard for violent offenders, it may adopt the standard with modification both for VCCLEA violent offenders and for all inmates who are subject to the PLRA.

The Bureau is therefore modifying § 541.13(a) and 541.14(a) to cover PLRA inmates and revising the explanation of Sanction B.1 in Table 4 to specify that the DHO shall impose a specific minimum disallowance in cases involving a VCCLEA violent offender or a PLRA inmate. The practical result of this is to establish that either one or two 100 or 200 level offenses would result in a VCCLEA violent offender or PLRA inmate's losing all good conduct time for the year. The wording of Sanction B.1 need not change in Table 3. The proposed revision to § 541.13(f) eligibility for restoration of forfeited good conduct time is not being finalized in this document. The Bureau intends to analyze the impact of the new sanctions on good conduct time before making a final determination. Sanction B in Table 3 and its explanation in Table 4 have been adjusted to note that a good conduct time sanction may not be suspended and that forfeited good conduct time will not be restored. The prohibition on suspension of good conduct time conforms to the treatment of disallowed good conduct time in Sanction B.1. In adopting the proposed rule as final, the Bureau is making two further editorial changes. Prohibited Act 109 (possession, introduction, or use of any narcotics, etc.) is being divided into three separate prohibited acts in order to simplify statistical reporting and analysis of such behavior. Prohibited Act 220 is also amended to exclude drill authorized and conducted by staff (for example, as may be given in an intensive confinement center program). New interim regulations for the intensive confinement center program were published in the **Federal Register** on April 26, 1996 (61 FR 18658). As noted above, the previously proposed revised sanctions are applicable to VCCLEA inmates rated as violent (i.e., inmates who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) and to PLRA inmates (inmates who committed offenses on or after April 26, 1996). Inmates who are eligible for good conduct time because they were sentenced under the provisions of the Sentencing Reform Act of 1984, but who were sentenced for a crime of violence committed before September 13, 1994 are not defined as ''VCCLEA inmates rated as violent'' or ''PLRA inmates'' and consequently are unaffected by the new sanctions for those inmates.

Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 541

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 541 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 541.13, paragraphs (a)(1) through (a)(4) are revised; in Table 3, under GREATEST CATEGORY, Sanction B is revised, the prohibited act language in column 2 for Code 109 is revised, and new Codes 111 through 113 are added in numerical order; in Table 3, under HIGH CATEGORY, Sanction B and the prohibited act for Code 220 are revised; in Table 3, under MODERATE CATEGORY, Sanction B is revised; in Table 4, Items 1.(b) and (b.1) are revised; in Table 5, item 2 under ''Sanctions Permitted'' for Low Moderate Sanctions, Moderate Sanctions, and High Sanctions is revised; and in Table 6, the column headings and the Note are revised to read as follows:

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) * * *

(1) *Greatest category offenses.* The Discipline Hearing Officer (DHO) shall impose and execute one or more of sanctions A through E. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent (i.e., an inmate who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) and for a PLRA inmate (i.e., an inmate who has been sentenced for an offense

committed on or after April 26, 1996). The DHO may impose and execute sanction F and/or G only in addition to execution of one or more of sanctions A through E. Except as noted in the sanction, the DHO may also suspend one or more additional sanctions A through G.

(2) *High category offenses.* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through M, and, except as noted in the sanction, may also suspend one or more additional sanctions A through M. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent and for a PLRA inmate. The Unit Discipline Committee shall impose and execute one or more of sanctions G through M, and may also suspend one or more additional sanctions G through M, except for a VCCLEA inmate rated as violent. All high category offense charges for a VCCLEA inmate rated as violent and for a PLRA inmate must be referred to the DHO.

(3) *Moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction A through N, but, except as noted in the sanction, may suspend any sanction or sanctions imposed. Sanction B.1 ordinarily must be imposed for a VCCLEA inmate rated as violent and for a PLRA inmate. Except for charges referred to the DHO, the Unit Discipline Committee shall impose at least one sanction G through N, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a moderate category charge for a VCCLEA inmate rated as violent or for a PLRA inmate if the inmate had been found to have committed a moderate category offense during the inmate's current anniversary year (i.e., the twelve month period of time for which an inmate may be eligible to earn good conduct time). The UDC must thoroughly document in writing the reasons why the charge for such an inmate was not referred to the DHO.

(4) *Low moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction B.1, or E through P. The Discipline Hearing Officer may suspend any E through P sanction or sanctions imposed (a B.1 sanction may not be suspended). Except for charges referred to the DHO, the Unit Discipline Committee (UDC) shall impose at least one sanction G through P, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a low moderate category charge for a VCCLEA inmate rated as violent or for a PLRA inmate if the inmate had been found to have committed two low moderate category offenses during the inmate's current anniversary year (i.e., the twelve month period of time for which an inmate may be eligible to earn good conduct time). The UDC must thoroughly document in writing the reasons why the charge for such an inmate was not referred to the DHO.

* * * * *

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

Code	Prohibited acts	Sanctions
	Greatest Category	
The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.		
*	*	*
		B. Forfeit earned statutory good time or non-vested good conduct time (up to 100%) and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
*	*	*
109	(Not to be used)	
*	*	*
111	Introduction of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
112	Use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
113	Possession of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
*	*	*
	High Category	
*	*	*
		B. Forfeit earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
*	*	*
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized and conducted by staff)	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

Code	Prohibited acts	Sanctions
* * *	* * *	* * *
	Moderate Category	
* * *	* * *	* * *
		B. Forfeit earned statutory good time or non-vested good conduct time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
* * *	* * *	* * *

TABLE 4.—SANCTIONS

1. * * *

* * * * * * *

(b) *Forfeit earned statutory good time, non-vested good conduct time, and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C. 4161 (less any previous forfeiture or withholding outstanding). The amount of good conduct time (GCT) available for forfeiture is limited to the total number of days in the ''non-vested'' status at the time of the misconduct (less any previous forfeiture). A forfeiture of good conduct time sanction may not be suspended. Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Forfeited good conduct time will not be restored. Authority to restore forfeited statutory good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden level. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

(b.1) *Disallowance of good conduct time.* I. An inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (includes the inmate who committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed. However, for crimes committed on or after September 13, 1994 and prior to April 26, 1996, credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree, or has been exempted from participation because of a learning disability. For crimes committed on or after April 26, 1996, credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody. Once disallowed, the credit may not be restored, except by immediate review or appeal action as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act. A sanction of disallowance of good conduct time may not be suspended. Only the DHO can take action to disallow good conduct time. The DHO shall consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time. A decision to go above the guideline range is warranted for a greatly aggravated offense or where there is a repetitive violation of the same prohibited act that occurs within a relatively short time frame (e.g., within 18 months for the same greatest severity prohibited act, within 12 months for the same high severity prohibited act, and within 6 months for the same moderate severity prohibited act). A decision to go below the guidelines is warranted for strong mitigating factors. Any decision outside the suggested disallowance guidelines is to be documented and justified in the DHO report.

II. VCCLEA inmates rated as violent and PLRA inmates will ordinarily be disallowed good conduct time for each prohibited act they are found to have committed at a DHO hearing, consistent with the following:

(1) Greatest category offenses: A minimum of 40 days (or, if less than 54 days are available for the prorated period, a minimum of 75% of available good conduct time) for each act committed;

(2) High category offenses: A minimum of 27 days (or, if less than 54 days are available for the prorated period, a minimum of 50% of available good conduct time) for each act committed;

(3) Moderate category offenses: A minimum of 13 days (or, if less than 54 days are available for the prorated period, a minimum of 25% of available good conduct time) for each act committed if the inmate has committed two or more moderate category offenses during the current anniversary period;

(4) Low moderate category offenses: A minimum of 6 days (or, if less than 54 days are available for the prorated period, a minimum of 12.5% of available good conduct time) for each act committed if the inmate has committed three or more low moderate category offenses during the current anniversary period.

However, the DHO may, after careful consideration of mitigating factors (seriousness of the offense, the inmate's past disciplinary record, the lack of available good conduct time, etc.) choose to impose a lesser sanction, or even disallow no GCT for moderate and low moderate prohibited acts by VCCLEA inmates rated as violent or by PLRA inmates. The DHO must thoroughly detail the rationale for choosing to disallow less than 13 days or 6 days respectively. This will be documented in Section VII of the DHO report. Disallowances of amounts greater than 13 days or 6 days respectively will occur with repetitive offenses consistent with the guidelines in this (b.1).

III. The decision of the DHO is final and is subject only to review by the Warden to ensure conformity with the provisions of the disciplinary policy and by inmate appeal through the administrative remedy program. The DHO is to ensure that the inmate is notified that any appeal of a disallowance of good conduct time must be made within the time frames established in the Bureau's rule on administrative remedy procedures.

IV. Except for VCCLEA inmates rated as violent or PLRA inmates, Sanction B.1 may be imposed on the Low Moderate category only where the inmate has committed the same low moderate prohibited act more than one time within a six-month period.

* * * * * * *

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
			Low Moderate Sanctions, plus.
*	*	*	* * *
			2. Forfeit earned SGT or non-vested GCT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).
*	*	*	* * *
			Moderate Sanctions (A, C, E–N), plus.
*	*	*	* * *
			2. Forfeit earned SGT or non-vested GCT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
*	*	*	* * *
			High Sanctions (A, C, E–M), plus.
*	*	*	* * *
			2. Forfeit earned SGT or non-vested GCT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
*	*	*	* * *

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. GT	Max. amt W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/SGT	Max. dis seg
*	*	*	*	*	*	*

Note: (1) In Table 6 headings, ''GT'' represents both good conduct and statutory good time and ''SGT'' represents statutory good time. Forfeited good conduct time is not eligible for restoration. Restoration of statutory good time will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

(2) An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

3. In § 541.14, paragraph (a) is amended by revising the last sentence to read as follows:

§ 541.14 Incident report and investigation.

(a) *Incident report.* * * * Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category or on a prohibited act in the High Category (when the High Category prohibited act has been committed by a VCCLEA inmate rated as violent or by a PLRA inmate).

* * * * *

[FR Doc. 97–25522 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1036–I]

RIN 1120–AA33

Literacy Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on the literacy program on an interim basis in order to include a definition of ''satisfactory progress''. This definition is one determinant which is statutorily required for the awarding and/or vesting of good conduct time for certain inmates. In implementing this change, the Bureau has further revised its regulations on the literacy program for the sake of clarification or simplification.

DATES: Effective November 3, 1997; comments must be submitted by November 25, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting interim regulations on its literacy program for inmates. A final rule on the literacy program was published in the **Federal Register** May 1, 1991 (56 FR 20089), and was corrected on March 17, 1992 (57 FR 9211).

The Bureau's literacy program, which uses the General Educational Development (GED) credential as the equivalence for a high school diploma, requires participation from inmates who are not able to demonstrate the achievement of a GED credential or a high school diploma, with certain stated exceptions. Section 20412 of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) requires, among other things, that credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree. Under the Comprehensive Crime Control Act, good conduct time vested annually. Section 809 of the Prison Litigation Reform Act of 1995 (PLRA) requires, among other things, that credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody, and that in awarding credit, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. A separate rulemaking published elsewhere in today's **Federal Register** addresses the discretion of the Bureau in awarding good conduct time credit to an inmate subject to PLRA (i.e., an inmate whose offense was committed on or after April 26, 1996).

In this document the Bureau is amending its regulations on the literacy program in order to include a definition of what constitutes satisfactory progress toward earning a GED credential. As defined in newly revised § 544.73(b), an inmate subject to VCCLEA or PLRA shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that the inmate refuses to enroll in the literacy program, that the inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program, or that the inmate has withdrawn from the literacy program. When an inmate subject to VCCLEA or PLRA receives a progress assignment indicating that he or she is not making satisfactory progress, this assignment shall not be changed to indicate that the inmate is making satisfactory progress until the inmate is currently and continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress.

Further revisions to the Bureau's regulations on the literacy program made for the sake of clarification or simplification are described below.

Previously, regulations in § 544.70 had specified that the minimum time required for participation is 120 calendar days or until a GED credential is achieved, whichever occurs first. Based upon the results of past program experience, 120 calendar days has been shown to provide sufficient time for the average inmate to achieve a GED credential. As revised, the Bureau has chosen to restate the time frame for minimum required participation in terms of instructional hours (i.e., 240 instructional hours is the equivalent of 120 calendar days). As revised, the statement of purpose and scope includes reference to exceptions stated in new § 544.71. Redundant references in § 544.70 to incentives have been removed.

Section 544.71 has been revised as a more clear statement of exceptions to mandatory participation. Paragraph (a)(2) contains additional statutory reference for study and observation cases. The exception for ''good cause'' formerly contained in paragraph (a)(4) has been replaced with more specific provisions in new paragraphs (a)(4) and (b). New paragraph (a)(4) allows for staff to make exceptions on a temporary basis due to special circumstances. Special circumstances (including, but not limited to, medical reasons, transfer on writ, being on the waiting list for initial placement) may make it temporarily impracticable to participate in the literacy program. Once the special circumstances are no longer applicable, the inmate shall be required to participate in the literacy program. The exception in new paragraph (b) is based upon the existence of an emotional, mental, or physical impediment to learning which has been documented through formal diagnostic assessment.

The provisions in former §§ 544.72 and 544.74 on work promotions and assignments have been consolidated and revised in a new § 544.74 as noted below. New § 544.72 contains the provisions on incentives formerly contained in § 544.75.

The provisions in § 544.73 have been revised to include the definition of satisfactory progress as noted above.

New § 544.74 consolidates provisions on work promotion and assignments contained in former §§ 544.72 and 544.74. These provisions have been revised for the sake of clarity. The revised provisions clarify that covered assignments above grade 4 include commissary positions. The revised provisions no longer stipulate that withdrawal from the literacy program may be used as the basis to remove an inmate appointed to a grade 4 position pursuant to new § 544.74(a)(1).

Section 544.75 has been revised to remove specific reference to calendar days. As noted above, the regulations state this period, where necessary, in terms of instructional hours.

The Bureau is publishing this regulation as an interim rule in order to solicit comment on a working definition of ''satisfactory progress'' without unnecessary delay in applying the definition to procedures for vesting and awarding good conduct time. As noted above, other changes in the regulations affect clarity or organization. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received before expiration of the deadline will be considered before the rule is finalized. Comments received after expiration of the deadline will be considered to the extent practicable.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(p), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart H of part 544 is revised to read as follows:

Subpart H—Literacy Program

Sec.
544.70 Purpose and scope.
544.71 Exceptions to required literacy program participation.
544.72 Incentives.
544.73 Program participation.
544.74 Work assignment limitations.
544.75 Disciplinary action.

Subpart H—Literacy Program

§ 544.70 Purpose and scope.

Except as provided for in § 544.71, an inmate confined in a federal institution who does not have a verified General Educational Development (GED) credential or high school diploma is required to attend an adult literacy program for a minimum of 240 instructional hours or until a GED is achieved, whichever occurs first.

§ 544.71 Exceptions to required literacy program participation.

(a) The following inmates are not required to attend the literacy program:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c), 4241(d), or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced deportable aliens;

(4) Inmates determined by staff to be temporarily unable to participate in the literacy program due to special circumstances beyond their control (e.g., due to a medical condition, transfer on writ, on a waiting list for initial placement). Such inmates, however, shall be required to participate when the special circumstances are no longer applicable.

(b) Inmates who have been determined (on the basis of formal diagnostic assessment) to have a documented emotional, mental, or physical individual impediment to learning shall not be required to complete the literacy program beyond those achievement levels indicated as realistic by the formal diagnostic assessment.

(c) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in, or to complete, the literacy program.

§ 544.72 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a GED credential.

§ 544.73 Program participation.

(a) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's literacy program. Initially, staff shall meet with the inmate for the purpose of enrolling the inmate in the literacy program. Subsequently, staff shall formally interview each inmate involved in the literacy program when necessary for the purpose of determining a progress assignment. Staff shall place documentation of these interviews in the inmate's education file.

(b)(1) For the purposes of 18 U.S.C. 3624, an inmate subject to the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) or the Prison Litigation Reform Act of 1995 (PLRA) shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that:

(i) The inmate refuses to enroll in the literacy program;

(ii) The inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program; or

(iii) The inmate has withdrawn from the literacy program.

(2) When an inmate subject to VCCLEA or PLRA receives a progress assignment indicating that the inmate is not making satisfactory progress, the assignment shall be changed to indicate satisfactory progress only after the inmate is currently and continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate has committed a prohibited act in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress (see paragraphs (b)(1)(ii) and (iii) of this section).

(c) At the end of 240 instructional hours, excluding sick time, furloughs, or other absences from scheduled classes, the unit team during scheduled program review sessions shall meet with the inmate to encourage continued participation in the literacy program until the inmate earns a GED credential or high school diploma. At these meetings, the inmate may elect not to continue in the literacy program, and no disciplinary action will be taken. The inmate may not discontinue this program when participation is mandated by statute.

§ 544.74 Work assignment limitations.

These limitations on work assignment appointment and promotion apply to all inmates, including those exempted from required participation in the literacy program by § 544.71.

(a) *Appointment.* (1) An inmate who does not meet the literacy requirement may be assigned to a grade 4 position contingent upon the inmate's continued enrollment in the literacy program.

(2) An inmate ordinarily must show prior attainment of a GED credential or high school diploma in order to be considered for a commissary work assignment above minimum pay level, an institution work assignment above grade 4 compensation, or an industrial work assignment above grade four or in a non-graded incentive pay position.

(3) If labor force needs require, an inmate who does not meet the literacy requirement may be assigned to an industrial non-graded incentive pay position if the inmate is simultaneously enrolled in a literacy or related program. Withdrawal from the literacy program shall result in termination of the assignment. Local Federal Prison Industry (FPI) management may elect to retain the reassigned inmate in an hourly rated grade 4 position.

(b) *Promotion.* An inmate ordinarily must show prior attainment of a GED credential or high school diploma to be promoted above the minimum pay level or grade in a commissary work assignment, an institutional work assignment, or an industrial work assignment. An inmate already in an assignment above the minimum pay grade who had met prior literacy requirements when approved for promotion is eligible for further promotion under the prior standard. Such inmate, however, must meet the current standard if, due to demotion based upon a poor performance appraisal, he or she needs to reapply for a promotion.

(c) *Exceptions.* The Warden may, for good cause, exempt inmates on a case-by-case basis, from the literacy requirements for work assignment appointment and promotion. Staff shall document such exemption in the inmate's education file and central file.

§ 544.75 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate lacking a GED credential or high school diploma if that inmate refuses to enroll in, and to complete, the mandatory 240 instructional hours of the literacy program.

[FR Doc. 97–25534 Filed 9–25–97; 8:45 am]

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federal register

Friday
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Part VII

Department of Defense

32 CFR Part 178

Closed, Transferred, and Transferring Ranges Containing Military Munitions; Proposed Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 178

RIN 0790–AG46

Closed, Transferred, and Transferring Ranges Containing Military Munitions

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing a rule that identifies a process for evaluating appropriate response actions on closed, transferred, and transferring military ranges. Response actions will address safety, human health, and the environment. This rule contains a five-part process that is not inconsistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and is tailored to the special risks posed by military munitions and military ranges. All closed, transferred, and transferring military ranges will be identified. A range assessment will be conducted in which a site-specific accelerated response (various options for protective measures, including monitoring) will be implemented. If these measures are not sufficient, a more detailed site-specific range evaluation will be conducted. Recurring reviews will be conducted, and an administrative close-out phase also is included.

DATES: Written comments on this proposed rule will be accepted until December 26, 1997.

ADDRESSES: Written comments (one original and two copies) should be addressed to: DoD Range Rule, P.O. Box 4137, Gaithersburg, MD 20885–4137. Comments may also be submitted electronically by sending electronic mail (''e-mail'') through the internet to: fbarrule@b-r.com. All electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file without special characters or any form of encryption, or as a Microsoft Word file. The administrative record for this rulemaking will be kept in paper form. Accordingly, the Department of Defense will convert all documents received electronically into printed paper form as they are received and will place the paper copies in the administrative record. In addition, comments may be faxed to (800) 870–6547.

Public comments and the supporting information used for this rule will be made available for public inspection and copying at the DoD range rule administrative record located at 910 Clopper Road, Gaithersburg, MD 20878–1399. This administrative record is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review the administrative record materials, the public must make an appointment by calling (301) 258–8753.

FOR FURTHER INFORMATION CONTACT: To request a copy of the Range Rule or to ask a general question, please call the toll-free DoD range rule information request line (available 24 hours a day, 7 days a week) at (888) 541–1081. The toll-free number for the hearing-impaired is (800) 870–6557. In addition, this proposed rule may be downloaded from the World Wide Web at http://www.acq.osd.mil/ens/. For specific technical questions, please contact Mr. Joseph Murphy, U.S. Army Environmental Center Range Rule Office, or Ms. Karen Heckelman, U.S. Army Environmental Center Office of Counsel, at (410) 612–7104.

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I. Legal Authority

This part is proposed under the authorities of the Defense Environmental Restoration Program (DERP), in 10 U.S.C. 2701 *et seq.*; the DoD Explosives Safety Board (DDESB), in 10 U.S.C. 172 *et seq.*; and Section 104 of CERCLA, in 42 U.S.C. 9601 *et seq.*, as delegated to the DoD by Executive Order (E.O.) 12580 (59 FR 2923, January 23, 1987).

II. Background

Section 107 of the Federal Facility Compliance Act of 1992 amended the Resource Conservation and Recovery Act (RCRA) and required the U.S. Environmental Protection Agency (EPA) to promulgate regulations identifying when conventional and chemical military munitions become hazardous waste subject to RCRA Subtitle C regulations. EPA's proposed military munitions rule (60 FR 56476, November 8, 1995) would have identified military munitions left on a closed range or a range transferred from military control as meeting the statutory definition of solid waste in RCRA Section 1004(27), potentially subject to RCRA corrective action or Section 7003 authorities. However, EPA's proposed rule also stated that if the Department of Defense, pursuant to the Department of Defense's own statutory authority, were to

promulgate a rule that addressed military munitions on closed or transferred ranges in a manner that was protective of human health and the environment and that allowed for public involvement in addressing these ranges, EPA would interpret the statutory definition of solid waste as not including military munitions left on closed or transferred ranges. The Department of Defense began development of this proposal, the ''DoD Range Rule,'' in response to EPA's proposed military munitions rule.

The final EPA military munitions rule was published on February 12, 1997 (62 FR 6622). In this final rule, EPA postponed action on whether to identify as solid waste military munitions left on closed or transferred ranges. EPA will reach its final decision on this issue based on further analyses of comments received on the military munitions rule and on the Department of Defense's final regulation governing the cleanup of munitions on closed and transferred ranges. In the final military munitions rule, EPA indicated that it is prepared to address this issue under Federal environmental laws if the Department of Defense does not promulgate the range rule or if EPA finds that the range rule does not adequately protect human health and the environment.

The Department of Defense is including transferring ranges within the scope of the range rule, even though they were not included in the scope of EPA's proposed military munitions rule, to more comprehensively address this issue. The DoD proposed rule addresses the unique explosives safety considerations associated with military munitions (including unexploded ordnance (UXO)) and the need for environmental protection, and it does so under DERP, 10 U.S.C. 172, and CERCLA authorities rather than under RCRA.

III. Summary of Proposed Rule

This proposal identifies a process for evaluating response actions on closed, transferred, and transferring military ranges. These response actions fully encompass safety, are protective of human health and the environment, and address risks based upon reasonably anticipated future land use.

Closed ranges include those ranges that are within military control but are put to a use incompatible with range activities. Transferring ranges include those ranges associated with Base Realignment and Closure (BRAC) activities and other property transfers to nonmilitary entities. Transferred ranges include those being identified in the Formerly Used Defense Site (FUDS) program.

The Department of Defense's proposed rule contains a phased process, with accelerated response (AR) options as part of an early phase. All closed, transferred, and transferring military ranges will be identified. Then a site-specific range assessment (RA), in which an AR involving various protective measures such as monitoring is implemented, will determine if the protective measures are sufficient to safeguard safety, human health, and the environment. If the protective measures in and of themselves are not sufficient at a specific military range, the range evaluation (RE) process will be initiated. The RE process includes more detailed data collection to support a site-specific safety risk assessment and a site-specific human health and ecological risk assessment. At the completion of the RA and/or RE, the Department of Defense will document its decision after input from Federal and State regulators, American Indian tribes, and the public. Recurring reviews will also be conducted. The final phase is an administrative close-out of range responses that have been completed.

In this proposed rule, the Department of Defense articulates the nature and extent of its environmental response authorities under DERP, 10 U.S.C. 172, and CERCLA. It is doing so in the form of creating a formal military range response process based on the general delegation of response authority given to the Department of Defense by Congress under DERP and by the President under CERCLA; the specific emphasis in DERP and 10 U.S.C. 172 on limiting risks posed to human health and the environment by military munitions (including UXO) and military ranges; and the unique nature of the risks posed by military munitions and military ranges, for which the Department of Defense alone has special responsibility and expertise.

IV. Section-by-Section Analysis

A. Purpose, Scope and Applicability

This proposal applies to all the DoD components, such as the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the National Guard Bureau (NGB), and the U.S. Coast Guard (USCG). It applies to military munitions on closed, transferred, and transferring military ranges previously or currently owned by, leased to, or otherwise possessed or used by the United States. These military ranges may not be under the administrative control of the Secretary of Defense (or the Secretary of War prior to 1949); however, the munitions themselves remain under the jurisdiction of the Secretary of Defense. For this reason, this proposal applies to military munitions on closed, transferred, or transferring military ranges where the range itself is under the administrative control of another Federal agency or property owner, provided that the activity that led to the munitions being on those ranges was in support of the Department of Defense's national defense or national security mission. For example, the national laboratories under the U.S. Department of Energy (DOE) conduct research, development, training, and evaluation of military munitions on behalf of the Department of Defense. Similarly, USCG conducts training activities involving the use of military munitions as part of their mission in support of the Department of Defense's national defense mission. In these cases the munitions remain under the jurisdiction of the Secretary of Defense, but the range may fall under the administrative control of the Secretary of Energy or the Secretary of Transportation. This rule uses the term ''Federal Land Manager'' to refer to Federal agencies having or clearly anticipated to receive jurisdiction, custody, or control of land affected by this proposal. The scope of this proposal is thus not inconsistent with DERP (10 U.S.C. 2701(c)), CERCLA, and EPA's military munitions rule.

In some instances, however, the United States does not own the property utilized as a military range but instead leases or leased the property, or otherwise possesses, possessed or used the property. Additionally, the land could be owned by a State entity, as when National Guard activities are conducted. For this reason, this proposal would be applied to military ranges owned by an entity other than the United States but where military activities, such as operation of a range by the NGB,[1] have occurred.

This rule does not apply to any closed, transferred, or transferring military ranges that are subject to response activities pursuant to any specific statutory authority (e.g., Title X of Pub. L. 103–139, DoD Appropriations Act, 1994, Conveyance of Kaho'olawe Island, Hawaii to the State of Hawaii,

[1] The NGB will be the Department of Defense agency responsible for evaluating and implementing response actions on closed, transferred, and transferring military ranges that are owned, leased, or otherwise possessed by a State National Guard if NGB validates that the military range is or was used for a military purpose. The DoD point of contact for military ranges owned or leased by a State National Guard will be located at the NGB.

where Congress has mandated special response actions, and a special cleanup agreement was developed between the Secretary of the Navy and the State of Hawaii) or pursuant to any agreements that were negotiated prior to the effective date of this rule and that cover military ranges. However, in either case, should any aspects of this proposed rule be useful in making a given response more efficient or cost-effective, then, upon mutual consent of the parties to the agreement, nothing in this rule would prevent the response from being so adapted for use at such a range. This rule also does not apply to ranges located outside the United States, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands.

Under CERCLA Section 120(e), the DoD component must enter into an interagency agreement with the EPA Administrator ''for the expeditious completion * * * of all necessary remedial action'' at a DoD site on the National Priorities List (NPL). Where a closed, transferred, or transferring range was identified and included in the interagency agreement for an NPL site, the interagency agreement, even if negotiated prior to the effective date of this rule, will govern. If the interagency agreement provides that subsequently identified areas of concern are included automatically in the interagency agreement, then for purposes of § 178.2(b)(2), such subsequently identified areas of concern would be considered to be ''identified and included in an interagency agreement for an NPL site.'' As stipulated in the preceding paragraph, nothing would prevent the response from following this rule instead, upon mutual consent of the parties to the agreement. If the range was not ''identified and included in the interagency agreement for an NPL site,'' this rule will be utilized. In some cases, UXO investigations or response actions are underway on closed, transferred, or transferring ranges at facilities where there are unresolved issues concerning the scope of the interagency or Federal facility agreement. This proposal does not apply to ongoing UXO response actions at such facilities, unless mutually agreed to by all parties to the interagency or Federal facility agreement.

Finally, this proposal does not apply to explosives or munitions emergency responses, as defined in EPA's military munitions rule (62 FR 6622, February 12, 1997). In the final rule, EPA defines an explosives or munitions emergency as all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. As defined by EPA, an explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions, and/or transport of those items to another location to be rendered safe, treated, or destroyed. Explosives and munitions emergency responses can occur on either public or private lands. The Department of Defense may not be the first responder to a military munitions emergency (for example, the local police or another Federal agency may be the first to arrive on the scene).

Under EPA's military munitions rule, explosives or munitions emergency response activities are exempted from most requirements under RCRA. Because explosives or munitions emergencies may or may not involve military munitions on a closed, transferred, or transferring military range, the Department of Defense has decided to exclude these activities from the scope of this rule and to conduct the activities in accordance with the provisions of EPA's military munitions rule. The fact that an area has been subject to an emergency response in the past should not, however, preclude that area from being subject to the range rule. The Department of Defense solicits comments on proposed §§ 178.1—178.3, which address the purpose, scope, and applicability of this rule.

B. Definitions

This proposal includes definitions for several terms that clarify the scope and applicability of this proposed rule. While the Department of Defense is not separately defining the nine criteria from the National Contingency Plan (NCP), the nine criteria mentioned in §§ 178.7(c) and 178.9(d) have the same meanings as the nine criteria as set out in the NCP. The Department of Defense requests comments on the following proposed definitions.

1. Military Munitions

This proposal includes a definition of military munitions in § 178.4(g). This definition is the same as the definition in EPA's final military munitions rule (62 FR 6622, February 12, 1997).

2. Military Range

This proposal includes a definition of a military range in § 178.4(h). A military range is any land mass or water body that is or was used for the conduct of training, research, development, testing, or evaluation of military munitions or explosives. A military range can be used for many purposes. Examples include missile, artillery, aerial bombing, tank, naval surface warfare, mortar, antiaircraft, grenade, small arms, demolition, and multipurpose ranges where combined arms are utilized. The definition in § 178.4(h) is the same as EPA's definition in the final military munitions rule (62 FR 6622, February 12, 1997), except that additional information is provided on activities and locations that do not meet the definition of a military range.

A classic setup of a live fire area military range consists of a central area called the ''impact area.'' The impact area varies in size depending on the type of military munitions employed. The impact area contains the targets that are fired upon and thus poses the greatest potential safety risk due to the concentration of military munitions employed (i.e., the impact area will normally contain the greatest concentration of UXO). Surrounding the impact area is a buffer zone. This area is not intentionally fired into but may include some UXO; thus military activities are not conducted in this area. Outside the buffer zone are the firing/release points from which military munitions are employed (e.g., fired, dropped, placed).

Another example of a military range includes designated land and water areas set aside for the purpose of training and conducting ''maneuvers.'' These maneuver areas are used to conduct military exercises and create an environment that simulates an area of conflict or an active war zone. During these maneuvers, training aids and military munitions simulators are used and expended. Examples are training ammunitions, artillery simulators, smoke grenades, pyrotechnics, mine simulators, and riot control agents used to simulate a chemical agent attack. Even though these training aids and simulators are used to create an environment that is safer than a war or open conflict, they may still pose an explosives safety concern. For this proposed rule, the definition of military ranges includes current and former designated maneuver areas on land and water.

Airspace and water or land areas underlying airspace used for aircraft-related training, testing, or research and development where military munitions were not used do not fall within the definition of military range solely as a result of the aircraft-related activities. Examples of airspace and underlying water or land areas that would not be considered a military range for purposes of this rule include areas used for air-to-air training, electronic scoring site ranges, military operations areas, and

military training routes (MTR). Electronic scoring site ranges provide bomber aircraft with a weapon drop score without the aircraft's actually releasing any military munitions. Military operations areas are areas that separate certain military activities (e.g., air-to-air training) from civil and military aircraft traffic under instrument flight rules. MTRs are used to conduct low-altitude navigation and tactical training in excess of 250 knots air speed below 10,000 feet mean sea level altitude. No military munitions are dropped or fired in MTRs.

A water range is another example of a military range. CERCLA and DERP address releases or threats of releases of hazardous substances, pollutants, and contaminants into the ''environment,'' which is defined in CERCLA as including navigable waters, the water of the contiguous zone, and ocean waters.[2] In general, in 33 CFR 2.05–1 to 2.05–35, the terms ''navigable waters,'' ''contiguous zone,'' and ''ocean waters'' are defined as being, respectively, the internal waters of the United States and its coastal waters out to a distance of 3 nautical miles, 12 nautical miles from the U.S. coast, and 200 nautical miles from the U.S. coast. As a result, the DoD ranges located on water courses within these three zones are likewise subject to this proposed regulation.

Over the life of a military range, the types and quantities of military munitions expended on the range vary greatly due to changes in mission and technology. An important characteristic of military ranges is that their use and/or the military munitions employed normally changes over time. As technology improves and weapons systems are replaced, new types of military munitions are developed and employed. Because of limited land availability and safety requirements, new ranges are often constructed on top of old ranges. Thus a variety of military munitions (including UXO) exist on a military range because of the different types of weapons that have been employed on a particular range during its life cycle. Changes in training needs over the years also contribute to the occurrence of several classes and types of military munitions at military ranges.

[2] CERCLA Section 101(8) defines ''environment'' as including ''(A) the navigable waters, the water of the contiguous zone, and ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act of 1976, and (B), any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.''

Historic battlefields are not covered by this proposed definition of a military range. Battlefields were used for actual combat and thus were not used for training, research, development, testing, and evaluation. The Department of Defense has transferred areas that were historic battlefields and may contain UXO from past conflicts. Even though these areas are not ''military ranges'' and are not covered by this proposal, the Department of Defense will continue to provide explosive ordnance disposal (EOD) support to civil authorities for any UXO discovered on historic battlefields.

3. Closed Range

This proposal includes a definition of a closed range in § 178.4(d). This definition was provided in EPA's proposed military munitions rule (60 FR 56476, November 8, 1995) and is consistent with the final military munitions rule (62 FR 6622, February 12, 1997). Closed ranges are ranges that have been taken out of service and either have been put to new uses that are incompatible with range activities or are not considered by the military to be potential range areas. Examples of incompatible use may include the construction of a permanent building not compatible with range operations or training, such as houses, schools, hospitals, clinics, commissaries, libraries, and other such buildings. Closed ranges remain under the control of the military. Closed ranges would include those ranges that are on Federal lands or otherwise possessed by the military, determined at the respective military department's Secretariat-level position to be closed, and where future use is incompatible with range activities. Areas that meet the definition of a closed range will be regulated under this rule.

4. Transferring Range

This proposal includes a definition of a transferring range in § 178.4(n). Under that definition, a military range that is proposed to be leased, transferred, or returned from the Department of Defense to another entity, including Federal entities, is a ''transferring range.'' To qualify as a military range ''proposed'' to be leased, transferred, or returned, within the meaning of this rule, the proposal must be concrete and specific. Further experience likely will be needed to develop and clarify this definition, particularly the requirement that a proposal be ''specific and concrete.'' DoD notes that where a Federal agency might receive jurisdiction, but the transfer is not sufficiently concrete or specific to be ''proposed'' within the meaning of the definition, the agency may sit on the project team for informational purposes only, and such participation is encouraged.

A number of military ranges are proposed for transfer outside of the military control. Transferring ranges include military ranges associated with the BRAC program, as well as any other property transactions in which military ranges are transferred to nonmilitary entities. It is important to note that, immediately prior to becoming a transferring range, a military range could be considered closed, inactive, or active. Transferring ranges remain under military control until they have been officially transferred to another party. Transfer may be by deed or lease, or by return under the terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument under which the Department of Defense used the property. An active range will not be considered to be a ''transferring range'' until the transfer is imminent. While an active or transferred range is easier to identify, classifying a military range as ''transferring'' is more complex, and is based on multiple site-specific factors. Reasonably anticipated land uses for the range property will be identified and agreed to prior to the land transfer.

In some situations, the Department of Defense may not transfer a military range or a portion of the range if during the assessment it is determined that the risks cannot be reliably managed or reduced (unless such transfer is congressionally mandated). If technology limits the range response and thus restricts the use of the land, but later improvements in technology allow for a change in the designated land use, the Department of Defense is responsible for conducting a later response, if doing so is consistent with the land transfer agreement and reasonably anticipated land uses that were originally identified. Areas that meet the definition of a transferring range will be regulated under this rule. EPA's military munitions rule does not address transferring ranges; the Department of Defense has included a definition in this proposal to more comprehensively address the issue.

5. Transferred Range

This proposal includes a definition of a transferred range in § 178.4(m). A transferred range is a military range that has been released from military control. FUDS are areas that were once controlled by the Secretary of Defense and may have portions that were used as military ranges. Transferred ranges

include those being identified in the FUDS program. These areas could have been transferred to other Federal agencies (U.S. Department of the Interior (DOI), DOE, etc.), State or local governments, or private citizens.

The transfer may have been by deed or lease, or by return under the terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument under which the Department of Defense used the property. For example, public lands may be federally owned lands under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM). These lands may be withdrawn (by statute, executive order, or public land order) from the operation of the public land laws and reserved for other Federal agencies' uses, including the Department of Defense. Agencies holding withdrawn public lands that they no longer need are to file with BLM a notice of intent to relinquish such lands (43 CFR 2372; 41 CFR 101–47.202–6). The BLM will then determine if the lands are suitable for return to the public domain for administration under the public land laws. If the lands are no longer suitable for return to the public domain, they will be processed as ''real property'' under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472), or under the property management and disposal provisions of the defense base closure laws, as applicable.

6. Inactive Range

This proposal includes a definition of an inactive range in § 178.4(f). As defined in EPA's military munitions rule (62 FR 6622, February 12, 1997), an inactive range is ''a military range that is not currently being used, but that is still under military control and is considered by the military to be a potential range area, and that has not been put to a new use incompatible with range activities.'' The Department of Defense has military range areas that have been used in the past for training, research, development, testing, or evaluating military munitions. Inactive ranges are held in reserve in case the Department of Defense has a change in mission that requires additional range areas. Some inactive ranges remain under military control to protect national security, as the activities conducted on them were classified. Therefore, inactive ranges would not be considered ''closed'' under this rule. Inactive ranges are not covered by this proposed rule or EPA's military munitions rule, but they do fall under existing environmental and DoD regulations if the source of possible contamination is other constituents, not military munitions, or if contamination from range activities is moving off the range. Active and inactive ranges will be addressed in a forthcoming DoD policy to be issued by DDESB on proper safety-based management techniques for such sites. The Department of Defense will issue guidance on when an inactive range should be classified as a closed range. Factors in this decision-making process include future testing, training, and new weapons development needs, as well as needed range rotation.

7. Active Range

This proposal includes a definition of an active range in § 178.4(b), which is the same as the definition of an active range in EPA's military munitions rule (62 FR 6622, February 12, 1997). The scope of the DoD range rule is limited to closed, transferred, and transferring ranges; a definition of active ranges is included in this proposal for the sake of clarity.

8. Unexploded Ordnance

This proposal includes a definition of UXO in § 178.4(o). This definition is the same as the definition of UXO in EPA's military munitions rule (62 FR 6622, February 12, 1997). Military munitions are designed to be safe during storage and handling operations and will not normally detonate until an item is actually employed. A military munition becomes UXO only after it has been employed and failed, in total or in part, to function properly. Due to the complex design of many military munitions and the large number of military munitions employed, some of them are almost certain to become UXO. The highly likely presence of UXO on closed, transferred, and transferring military ranges creates a safety risk.

9. Other Constituents

This proposal includes a definition of other constituents in § 178.4(j). Due to their complexity and varied functions, military munitions may contain many other constituents that may be a source of concern on military ranges.

Military munitions can be composed of propellants, explosives, and pyrotechnics (PEP); chemical agents; metal parts; and other inert components. When munitions are employed on a range, the PEP components generally are consumed, leaving behind metal parts and other inert components that may be distributed in small pieces across a large area. The risk caused by the metal parts and other inert components will depend on the types of materiel used, the susceptibility of this materiel to leaching and other transport mechanisms, the physical characteristics of the range (the climate, amount of rainfall, soil type, etc.), and the quantity of military munitions employed. These components of military munitions, if released into the environment, are included in the definition of other constituents.

A small percentage of military munitions employed on military ranges fail to function as intended, which can result in UXO remaining on the range. UXO can pose a safety hazard (as discussed in Section IV.C.1. of this preamble, Safety) and/or an environmental concern. PEP compounds in military munitions could be released to the environment when the munitions casing is damaged or deteriorated. To a lesser extent, metal or other materials could build up over time in the environment. While UXO itself is not considered an other constituent, compounds released from the UXO are included in the definition of other constituents. At significant concentrations, other constituents may present explosives safety risks.

Other constituents that may be identified on military ranges also could include fluids from vehicles used as targets or from activities that occurred prior to the area's being used as a military range (e.g., landfill, industrial operations). Other constituents that are present on a military range and that fall under other regulatory authorities may be addressed by the appropriate agency (see Section IV.F.1.b. of this preamble, Relationship to Other Laws, and Section V, Discussion of Other Major Alternatives).

10. Federal Land Manager

This proposal includes a definition of Federal land manager in § 178.4(e). DERP applies to property ''owned by, leased to, or otherwise possessed by the U.S. and under the jurisdiction of the Secretary [of Defense]'' (10 U.S.C. at 2701(c)). For simplicity, the Department of Defense has used the term ''Federal land manager'' throughout the rule to refer to a Federal agency that has received or is clearly anticipated to receive jurisdiction, custody, or control over the property. The phrase ''clearly anticipated to receive jurisdiction'' refers to situations where the transfer to the Federal agency is statutorily established; legally required; incorporated in a legislative proposal formally supported by the Administration; designated under the land reuse plan; or where the transfer to the Federal agency is otherwise recognized as being clearly anticipated,

such as where both the Federal agency and the DoD component have agreed that such transfer will take place. Where a Federal agency has been proposed to receive jurisdiction, custody, or control of a former range, but the agency is not yet a Federal land manager as defined in this rule, the agency may sit on the project team for informational purposes only.

11. American Indian Tribe

This proposal includes a definition of American Indian tribe in § 178.4(c). This term is used in the proposed DoD range rule to describe Native American tribes and Native Alaskan villages that meet specific criteria so that they can be afforded substantially the same treatment as States under this rule, and thus receive a concurrence role in the range response process. The governing body of the American Indian tribe must be federally recognized by the Department of Interior; have an appropriate tribal governing body that performs health, safety, or environmental functions; and have real property interests, as defined in § 178.4(l) of this rule, over some or all of a closed, transferred, or transferring range at which a response, including pre-response activities, is ongoing or contemplated.

12. Property Owner

This proposal includes a definition of a property owner in § 178.4(l). The term ''property owner'' as used in this proposal refers to non-Federal entities that now own property that is a closed, transferred, or transferring military range, and to Native American tribes and Native Alaskan villages that own property or land held in trust by the United States for that tribe or village or its individual members. ''Property owner'' also includes any non-Federal entity legally entitled to control access to the property, to the exclusion of the right of the legal owner to control access, if known to the responsible DoD component. This situation may exist if the person legally entitled to control access to the property is different from the current legal owner (e.g., in lease situations).

C. Summary of Challenges

Military munitions are designed to injure or kill people and/or to damage or destroy property. Thus, during any environmental response activity, the presence or suspected presence of military munitions creates unique challenges due to explosives safety concerns. Before undertaking any response action on a closed, transferred, or transferring military range, the Department of Defense must first consider the explosives safety risks inherent in locating, investigating, evaluating, and responding to military range areas where military munitions are known or suspected to be present. The explosives safety risk is equally great regardless of whether military munitions (including UXO) or other constituents are being addressed in the response action. Response personnel, even those specially trained to deal with the explosives safety hazards associated with military munitions, must not be exposed to an unreasonable explosives safety risk in order to address less compelling environmental concerns. The risk to response personnel increases as the density of military munitions, e.g., UXO, increases. Additionally, rough terrain and thick vegetation restrict visibility and mobility, thereby substantially increasing the explosives safety risks associated with response activities. Response activities are made more difficult and dangerous because technology is not yet sophisticated enough to ensure positive detection, identification, and subsequent removal of all military munitions in any given area.

1. Safety

The Department of Defense is committted to the management of safety risks associated with exposure of the public and clearance personnel to military munitions. As discussed throughout this rule, the explosives safety risks from locating and clearing unstable materials such as UXO are very high. The investigation and restoration activities associated with other constituents present similar risks, as they usually occur in areas that also contain UXO. The Department of Defense is the recognized expert in the management of these risks. Federal, State, and local regulators typically seek DoD's expertise in safely managing military munitions and other ordnance discovered at non-DoD sites. Unless the explosive risk is first eliminated or at least reduced, catastrophic injury or fatalities may result from any response activity.

Typical military munitions/UXO on military ranges may include: bombs (up to 2,000 pounds), artillery, mortar, aircraft cannon, or tank-fired projectiles (20-millimeter through 16-inch), dispensed munitions, submunitions, rockets, guided missiles, grenades, general demolition materials, bulk explosives, pyrotechnics, torpedoes, mines, small arms ammunition, and chemical munitions. Military munitions are designed to be safe during storage, handling, and transportation. The fuzes used with these items also have built-in safety features to preclude arming of the munition until actual employment (firing, placing, etc.) of the item. It is not until after the munition has been employed and failed to function (totally or in part) that it becomes UXO.

Although the fuze is the most sensitive portion of the UXO, the filler may pose an even greater danger to human health and the environment. By their nature, high-explosive fillers present risks. Explosives may deteriorate over time to form sensitive crystals that could detonate if subjected to heat, shock, or friction. Chemical munitions contain chemical agents that present additional safety risks. High-explosive fillers, deteriorated explosives, and chemical munitions are a few examples of military munitions where the filler itself requires special safety consideration, even if the fuzing mechanism is no longer capable of firing.

Fuzes are designed to initiate a train of fire or detonation in ordnance by an action such as mechanical or electronic timing, electrical or mechanical energy, impact, radar, chemical, pyrotechnic, hydrostatic pressure, etc. Once safety devices (such as safety pins, safety blocks, and arming wires) are removed, a fuze can require one or more of the following forces to fully arm: acceleration, deceleration, setback, or centrifugal force. EOD personnel cannot visually determine if a fuze is armed. Therefore a fuze must be considered armed and ready to fire if the right force is applied. For example, a clockwork mechanism fuze that has armed but failed to function contains a firing pin under spring tension which, if disturbed, could fire. Also, many military munitions pose even more serious risks because they have a secondary system that will, should the munition fail to operate as intended, detonate the munition if it is disturbed in any way.

Addressing the unique problems associated with UXO on military ranges requires that knowledgeable UXO personnel and specialized safety procedures be used. The acute hazard associated with the presence of armed and potentially deadly UXO is the primary factor that drives the sequence of investigative and remedial actions. In essence, acute safety concerns direct and determine the sequence of site activities. Once the explosives hazards are identified and addressed, further response actions may occur. In some cases, normal activities may be delayed (e.g., drilling monitoring wells in UXO areas), or additional requirements may have to be met (e.g., UXO surface

clearance, followed by downhole magnetometry at regular intervals to detect subsurface ordnance present in the area where a well is being drilled). The most acute risk is to the response personnel who come near the UXO. In some cases, the risk may be so high as to preclude a clearance action.

2. Current Technological Capabilities

a. *Military munitions/UXO detection:* Military munitions detection, which is often referred to as ordnance detection, has been undertaken since the first military munitions were found on the battlefield. The clearing of military munitions requires personnel to have the capability to safely and precisely locate these items regardless of whether they are lying on the surface, covered with heavy overgrowth, buried deeply in the soil, or located underwater and potentially buried in the sediments.

Several recent tests and evaluations have identified shortfalls in UXO detection technology. Detection technologies can be hampered by the depth of penetration of the munition. The penetration depth is dependent on the munition's velocity upon impact, size, weight, shape, angle of entry, and the type and composition of soil. Obvious physical signs made by military munitions, such as entry holes, are quickly erased by natural weather processes or are often destroyed by other impacting ordnance. The growth of grass and brush compound the problem by covering munitions lying on the surface. Since many of the ranges covered by this proposed rule have not been active for many years, vegetation often hinders the ability to detect the munitions. Methods to address the problems of dense vegetation, such as deforestation and controlled burns, can cause other environmental problems. Underwater items often are buried by silt or covered with marine growth. In addition, military munitions on water ranges can be greatly affected by coastal storms and tidal actions that can immerse the military munitions in a bed of sediments or uncover military munitions that were previously embedded in sediments. Furthermore, the depth or condition of a water range may make analysis, much less retrieval, effectively impossible, or may pose an unreasonable risk to the health and safety of range response personnel.

In summary, items that affect UXO detection include: munition size, composition, depth, and orientation; soil composition and geology; vegetation and terrain; and background interference from metal scrap. Strides will have to be taken to eliminate the high degree of uncertainty associated with UXO detection. Safe clearance operations require technologies that can detect and determine the precise location of a broad spectrum of military munitions in a wide variety of soil and surface conditions, both on land and under water. Safe clearance operations also require the capability to internally examine items to identify hazardous contents, including fuzing as well as filler material.

Detection and location of military munitions depend primarily on the ability to distinguish their physical characteristics from those of the surrounding environment. Characteristics that have the most impact on the effectiveness of current detection and removal technologies include the materials used in the ordnance case, fuzing, and filler. The majority of casings are constructed of ferrous (i.e., iron-containing) metal. Nonferrous metals and plastics, however, are used for some submunitions and land mines. Nonferrous military munitions make detection much more difficult and subsequent clearance more dangerous. Fuzing systems include combinations of ferrous and nonferrous metals, plastics, electrical circuits, and small amounts of explosive materials. Filler materials include a variety of high explosives, chemical agents, pyrotechnics, and inert items such as concrete and sand.

Common methods used to detect military munitions include visual searches, magnetometers, electromagnetic induction (metal detectors), and ground-penetrating radar (GPR). A visual search for military munitions is restricted to the surface and often is hindered by vegetation and terrain. Magnetometers are the most commonly used form of detecting military munitions below the surface and can be adapted for underwater use. Low-sensitivity magnetometers have a limited depth of detection capability, while high-sensitivity magnetometers have a large number of false detections. Magnetometers can only detect munitions that contain ferrous metal. Metal detectors can locate both ferrous and nonferrous metallic objects and can be adapted for use under water; however, metal detectors can only detect munitions that are located very near the surface. GPR can collect rough images of buried metallic and nonmetallic munitions, but its effectiveness is severely limited in certain soil conditions. In general, the material used in the construction of military munitions, the munition's size and depth, and the soil's composition all affect the effectiveness of available technology.

(1) Advanced technology demonstrations. Congress authorized and appropriated funding in fiscal years 1993 to 1995 to conduct unexploded munition technology demonstrations. In response, the U.S. Army Environmental Center established the UXO Advanced Technology Demonstration (ATD) Program with technical support from the U.S. Naval EOD Technology Division. The objective of this program was to evaluate and identify innovative, cost-effective, commercially available systems for the detection, identification, and removal of UXO. These demonstrations have established a technology baseline for UXO detection and removal. In addition, the ATDs have progressively monitored state-of-the-art UXO technology advancements.

There are four separate and distinct projects associated with the multiyear Congressional funding:

(1) Jefferson Proving Ground (JPG) Phase I ATD, conducted during summer 1994.

(2) JPG Phase II ATD, conducted during summer 1995.

(3) Live Site ATDs, conducted during summer 1995.

(4) JPG Phase III ATD, conducted during summer and fall 1996.

The JPG Phases I through III ATDs were conducted at a controlled test site, which contained numerous types of inert ordnance precisely located at various depths and orientations. The Live Site ATDs were conducted at five sites across the United States that contained live ordnance. Commercial companies were invited to demonstrate their system's ability to detect, characterize, or remotely excavate UXO.

To date, more than 60 technologies have been demonstrated and evaluated as part of the ATD program. The demonstrators represented airborne, ground vehicle, and man-portable platforms; magnetometer, GPR, electromagnetic induction, and infrared sensors; target processing software; and excavation technologies.

To date, technology performance ATD results have shown systems exhibiting ordnance detection capabilities ranging from 0–85%. JPG Phase III results, although not yet published and released, once again indicate increased detection performance. While commercial technology has exhibited less than desirable capabilities (especially evidenced during JPG Phase I), private industry has made strides to identify technology performance weak points. Phases II and III show evidence of increased private industry teaming efforts, commercial research and development efforts, and clearer understanding of government needs.

Combined, this translates into enhanced systems and capabilities. However, throughout all ATDs, UXO detection technology continues to exhibit extremely high false alarm rates and minimal or no discrimination ability. Systems are unable to determine if a detected anomaly is ordnance or a piece of scrap metal. For example, if 100 ordnance items are located on a range scheduled for remediation, a technology may be able to detect 85 of the 100 UXO items. However, the demonstrator would also falsely identify over 200 other locations. For excavation purposes, this translates into many empty holes and unnecessary excavation.

(2) *Other assessments of UXO technology.* The Army Corps of Engineers recently evaluated UXO detection technology applications at 33 specific sites. The Army Corps of Engineers stated that, in general:

> [T]hree [main types of UXO sensor] technologies [(magnetometry, infrared, and ground-penetrating radar)] for the detection and location of [UXO] tend to dominate. While other evolving technology is promising, there is considerable development yet remaining. The most important observation, however, is that there is no single technology that can accomplish this task unambiguously. For all their merits, neither magnetometers, GPR, nor [metal detectors] alone can assure more than a modicum of success probability. While each is a powerful technology with distinct advantages, none has the breadth of capability to interpret all of the phenomena that are typically encountered in the search for [UXO]. This includes the capability to discriminate [UXO] from background artifacts, the ability to resolve individual entities below-ground, and the ability to determine depth below the surface independent of geology.[3]

Of the 28 systems the Army Corps of Engineers evaluated, only 5 were rated above average. Four were rated as average, while 19 were rated as below average. The Army Corps of Engineers concluded that ''the vast diversity of ordnance * * * coupled with the very nature of its designed use * * * renders the detection and location of [UXO] a very difficult task.''

Additionally, the DoD Inspector General has reviewed UXO detection technologies and stated that ''the technology currently employed to detect and remove ordnance is primitive and labor intensive.''[4] In a 1994 report, the DoD Inspector General stated:

> To date, there has been limited success in identifying UXO on or near the cleared surface. Detecting and identifying UXO underground present a much greater challenge * * *. We found that relatively primitive detection and ''pick and shovel'' removal methods are typically used for ordnance and explosive waste cleanup. The basic approach is to remove as much vegetation as possible, mark off grids, then use crews with hand held magnetometers to ''sweep'' the area. The magnetometers will detect any metal to a maximum depth of approximately three feet. When a metal object is detected, it is exposed by careful hand excavation. Most of the objects identified through that procedure are simply non-explosive scrap metal. However, when UXO is found, it is either destroyed in place or removed to a safe location for destruction. Those procedures are usually labor intensive and thus very expensive. The dangerous nature of the work requires the use of highly trained Explosive Ordnance Disposal personnel.[5]

The Inspector General concluded that UXO cleanup operations were ''relatively simplistic, labor intensive, sometimes environmentally disruptive, and expensive.''[6] Thus, despite the efforts placed on developing effective detection technology, UXO detection technology cannot currently support a totally efficient response effort.

b. *Clearance technology and activities:* In earlier years, military munitions generally were detonated in place. Even now, detonation in place is a primary response when moving a munition presents a safety risk. Section IV.C.1 of this preamble, Safety, describes some of the basic elements that affect the explosives safety risk of UXO. To accomplish range clearance, a series of complex detection and location tasks must be undertaken, such as locating surface and subsurface objects, distinguishing if the object is or may be a munitions item, and identifying the type of device and the type of filler used. Once located, there are two types of clearance methods available: point recovery and area recovery. Point recovery relies heavily on technologies to locate possible ordnance items and uses current construction, mining, and drilling technologies to unearth the detected objects. Area recovery is the removal and sifting of all soil to a certain depth, utilizing heavy equipment to remove ordnance items and debris.

The safe excavation of buried military munitions requires the removal of large quantities of soil. As the clearance depth increases, fewer military munitions are found, but the items that are found typically contain large amounts of explosives. The precise location of the buried items becomes more difficult, so their recovery often becomes a major excavation effort. Both methods are labor intensive, time-consuming, and expensive. They also present a high risk of injury or death to clearance personnel due to the larger amounts of explosives in the buried munitions. Results from the demonstration at JPG showed that robotic excavation of located UXO is feasible. Robotic responses are time-consuming, however, and could have a significant adverse impact on the speed of response operations if a large quantity of UXO requires excavation.

c. *Other constituents:* This rule addresses military munitions and other constituents on a military range. The Department of Defense recognizes that other constituents include materials that are uniquely military in nature. EPA has not established a scientific environmental baseline relative to fate, transport, and toxicological impact of these materials, or the degradation products on the environment. Although some scientific data have been collected on some of these materials on a site-specific basis, these data cannot be directly extrapolated to a national risk analysis profile. The Department of Defense will need to gain a better understanding of the adverse environmental impact, if any, of these uniquely military materials through ongoing research and development. In order to ensure the most effective response to other constituents that are uniquely military materials on ranges, the Department of Defense will prepare and implement an overall technology research and development plan based on information needed to complete the range hazards analysis and range response prioritization.

3. Technology Development

The Department of Defense recognizes the potential negative environmental impacts presented by UXO and is committed to reducing the quantity of UXO generated to the greatest extent possible. This commitment is evidenced across the life-cycle management of military munitions. The UXO reduction effort begins during the design phase of

[3] U.S. Army Corps of Engineers, ''Sensor Technology Assessment for Ordnance and Explosive Waste Detection and Location,'' page 134 (March 1, 1995).

[4] The Department of Defense, Inspector General, Memorandum for Deputy Under Secretary of Defense (Environment Security), ''Review of Policies and Procedures Guiding the Cleanup of Ordnance on Department of Defense Lands,'' page 35 (November 22, 1994).

[5] The Department of Defense, Inspector General, Memorandum for Deputy Under Secretary of Defense (Environment Security), ''Review of Policies and Procedures Guiding the Cleanup of Ordnance on Department of Defense Lands,'' page 35 (November 22, 1994).

[6] The Department of Defense, Inspector General, Memorandum for Deputy Under Secretary of Defense (Environment Security), ''Review of Policies and Procedures Guiding the Cleanup of Ordnance on Department of Defense Lands,'' page 42 (November 22, 1994).

new munitions, where attempts to produce ''green munitions'' by eliminating toxic components are underway. Significant research and development efforts are also underway to find environmentally acceptable ways to dispose of or destroy munitions at the end of their life cycle. For example, the Department of Defense now is fielding a UXO tracking system based on geo-prepositioning technology. This tracking system is designed to provide range managers with the location, type, and quantity of UXO and will assist them in reducing or eliminating unidentified UXO during routine range sweep operations. Finally, fully recognizing the limits of current technology to reliably find subsurface UXO, the Department of Defense is committing resources to develop, in concert with the private sector, new and emergent technologies that will improve the ability to locate and eliminate UXO. Therefore, the Department of Defense sees a pressing need for additional research in these areas. This is particularly true when safety considerations prevent entering the range to conduct site-specific investigations of other constituents or when the available methods to address UXO, such as a large-scale excavation, are known to have serious environmental impacts.

While detecting, approaching, detonating, and even in some cases excavating and moving UXO is possible, the process for assessing ranges and for evaluating alternatives for site-specific responses provides only limited opportunity for technological advancement. Due to the current need for advancement in these areas, both here in the United States and throughout the world, the Department of Defense believes that there must be a commitment to conducting research and technology development in these areas separate from the actions being taken at specific ranges. Since fiscal year 1993, Congress authorized and appropriated $25 million for a DoD program at JPG to identify and demonstrate the ''state-of-the-art'' in UXO detection and remediation technologies. The JPG program did establish what state-of-the-art detection technology existed and highlighted areas in need of future development. Congress has authorized and appropriated an additional $5 million (beginning in fiscal year 1997) to continue the ATD Program, JPG Phase IV.

Opportunities to evaluate and implement new technologies can occur anywhere from range assessments to recurring reviews. The Department of Defense is soliciting recommendations on means to integrate research and technology development into the range response program as outlined in this proposal.

Realizing that the only true way to eliminate UXO is to reduce the use of live munitions, the Department of Defense is focusing additional efforts on greater use of simulators, practice munitions, or less-than-lethal technology to reduce the quantity of UXO being introduced on active ranges. It is a fact, however, that to prepare for war, the nation's servicemen and women must train with live munitions. The Department of Defense has therefore committed to minimizing to the greatest degree possible the introduction of UXO into the environment through aggressive range management practices.

4. Magnitude

Military munitions have been expended in the United States since pre-Revolutionary War times. Employment of military munitions has always led to some percentage of the munitions not functioning as intended, resulting in the presence of UXO. Through the end of the 1800s, the bulk of military munitions was expended in the United States during armed conflicts. Although no battles other than in Hawaii, Alaska, Guam, and several other territories have been fought on U.S. soil in the 20th century, military training and weapons development to deter and prepare for armed conflicts have resulted in the presence of military munitions at ranges throughout the country. During both World Wars, extensive defenses were established along the Atlantic and Pacific coasts. Many of the military installations established to train and support U.S. armed forces during World War II continued to use military ranges throughout the Cold war era. As the extent of the U.S. military force's structure varied throughout the 20th century, military installations have expanded or decreased operations, and some have ceased operating entirely.

a. *Transferred ranges:* Many transferred ranges are a subset of FUDS, but not all of them qualify for the FUDS program. The FUDS program has identified approximately 8,000 former DoD properties. Of these, fewer than 1,000 have the potential to be classified as transferred ranges. The largest amount of acreage affected resides on the 169 sites identified on DOI-controlled lands. The current estimate is that more than 7 million acres of DOI property potentially contain military munitions. A large number of these DOI sites are suspected of having been used as military ranges during the World War II era. The Department of Defense may identify transferred ranges through archive searches, aerial photography, interviews with past employees, and other available sources of documentation.

b. *Transferring ranges:* Transferring ranges are frequently the result of closure decisions under BRAC. The Department of Defense also leases properties from other parties for use as military ranges. When a decision is made to terminate a lease, the affected range will be classified as a transferring range. In addition, the Department of Defense can excess property that may contain military ranges. However, the Department of Defense has established policies over the past decade to prevent the release from DoD control of additional properties containing military munitions that may pose risks to the public.

c. *Closed ranges:* Closed ranges are located on active military or National Guard installations. Military ranges on active military installations can be divided into three categories: active ranges that are currently being used to train or test military munitions; inactive ranges that are being kept in the range inventory in case conflict would break out requiring an increased level of training in the future; and closed ranges that are no longer needed for training or testing by the military and have been converted to an incompatible use. The Department of Defense began to keep records of inactive and active ranges in the mid-1970s. The Department of Defense recognizes the need to identify and maintain an inventory of closed ranges. The Department of Defense may identify closed ranges through archive searches, aerial photography, interviews with past employees, and other available sources of documentation.

D. Overview of the Range Response Process

1. Introduction

Addressing the unique problems associated with military munitions and other constituents on military ranges demands an approach that modifies the one taken under the CERCLA response and RCRA corrective action programs. The most significant reason for this difference is the absolute need to minimize explosives safety risks in planning, conducting, and implementing response actions. This is because the acute hazards associated with military munitions (especially UXO) are the primary factor driving the scope, sequence, and types of actions that are possible on the range. These concerns are unique to military ranges

in that most actions on CERCLA response or RCRA corrective action sites do not need to consider an explosion hazard posed by the presence of a munition or explosive. For example, installation of a monitoring well at most CERCLA sites does not require surveying the access route for buried military munitions or conducting a magnetometer survey as the well is drilled. Another example where range responses require a different approach is in balancing the risks and impacts of addressing the military munitions and/or UXO and other constituents against the risks involved in not taking an action. Minimizing explosives safety risks while achieving the proper balance between these competing concerns is the goal of the program described in this proposal.

The requirements of 10 U.S.C. 172, DERP, and CERCLA to respond to environmental risks at ranges provide a basis for the Department of Defense to develop a response program that addresses the same factors as are applied at CERCLA response or RCRA corrective action sites where military munitions or UXO are not present, but with a different and overarching emphasis: to protect not only the public and environment in general but the response personnel as well. In developing this proposal, the Department of Defense sought to be as consistent as possible with the overall process used in CERCLA response and RCRA corrective action programs. In taking this approach to developing this proposed rule, the Department of Defense drew not only on its experience and expertise with respect to ranges but also on its own experience with site investigation and response under CERCLA response and RCRA corrective action. Further, the Department of Defense drew on the experience of other Federal agencies. One very important source was EPA's own reviews of, and recommendations for improving, the CERCLA response and RCRA corrective action programs.

In developing the response process for military ranges described in this proposal, the Department of Defense established the following basic parameters. First, the process must minimize explosives safety risks; protect human health and the environment; and directly include the public, American Indian tribes, and appropriate Federal and State agencies by seeking their active participation throughout the process. Second, the process should focus on informed risk management decision-making and risk management actions rather than protracted study. Third, the process should, where possible, draw on the lessons learned in the CERCLA response and RCRA corrective action programs, and incorporate into its basic approach the recommended changes to improving those programs.

The Department of Defense is developing, in consultation with other Federal agencies, a conceptual time frame to establish timeline goals for beginning the first two phases of the range response process. The Department of Defense expects this conceptual time frame to be included in the final rule. See also § 178.6(a). Conceptual time frames for the later three phases will be made publicly available when developed.

2. Program Overview

The process for addressing military ranges has five basic phases. These are: (1) Range identification, (2) Range assessment/accelerated response (RA/AR), (3) RE/site-specific response, (4) Recurring review, and (5) Ending the range response action. A graphical portrayal of the process appears in figure 1, DoD Range Rule Process Overview. The demarcations between the phases are mostly for discussion purposes and are not distinct starting and stopping points. A military range addressed through this process can fall into more than one phase at any given time, depending on site-specific considerations.

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FIGURE 1 (PAGE 1 OF 2)

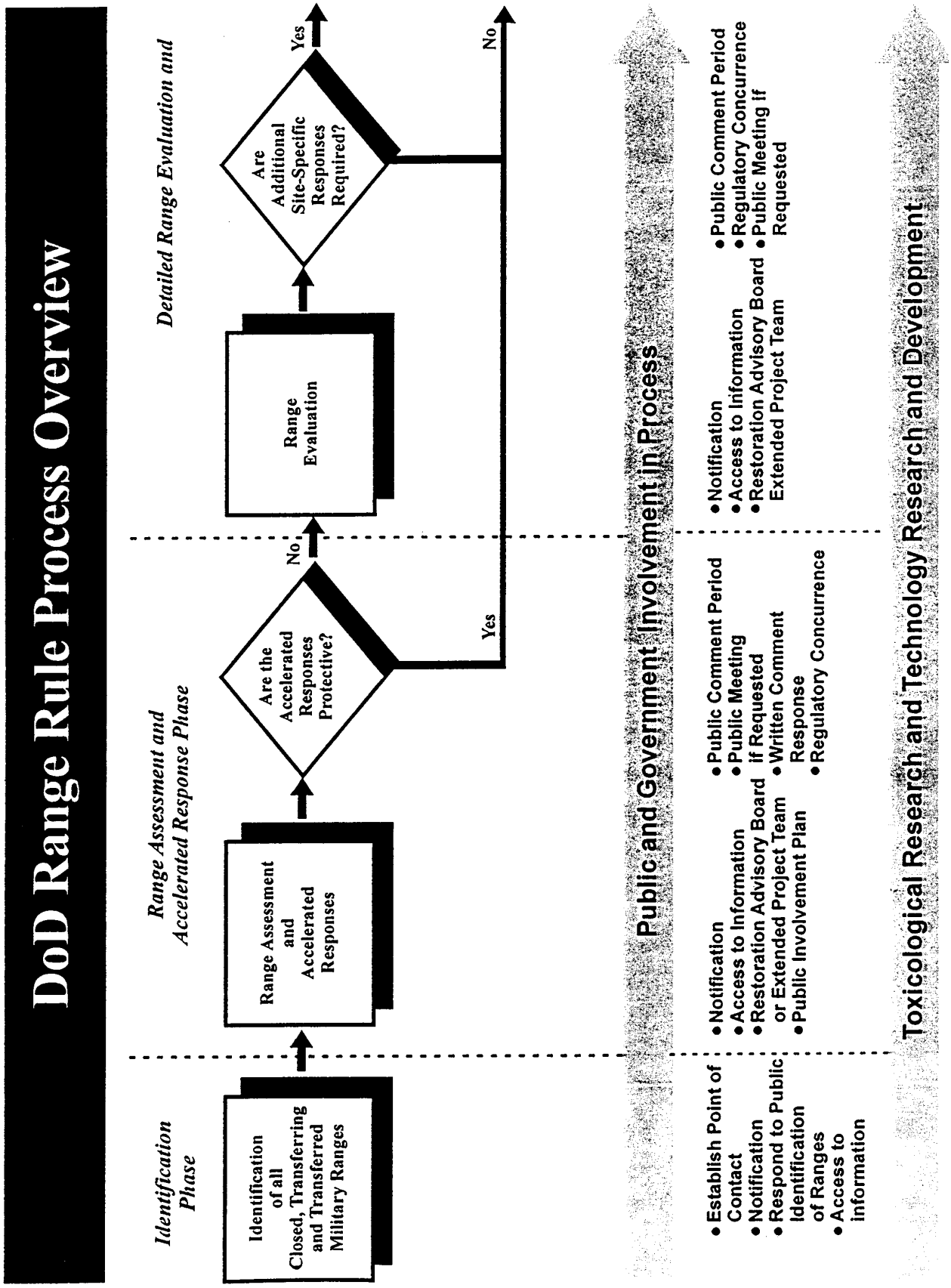
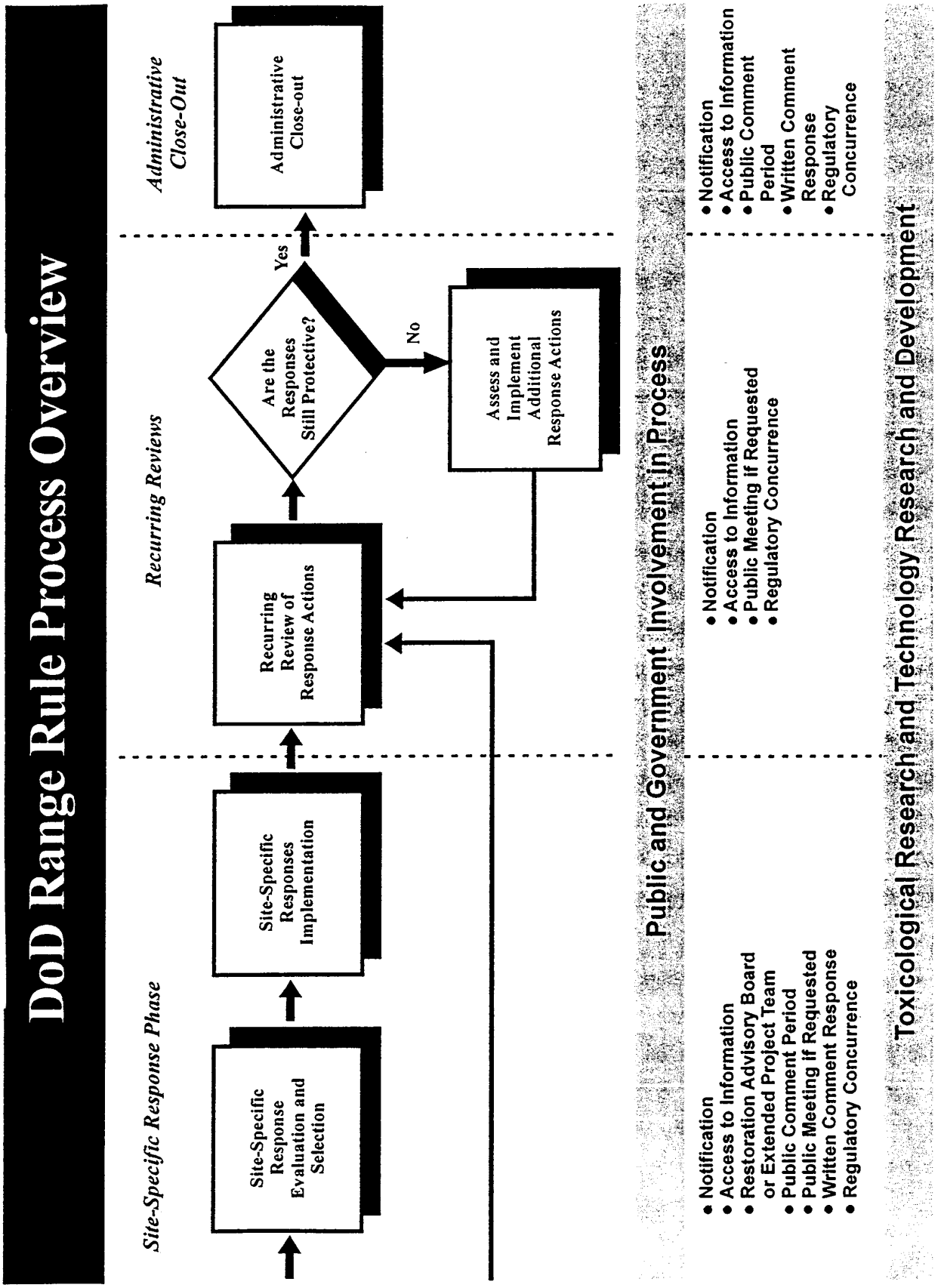


FIGURE 1 (PAGE 2 OF 2)



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The process for conducting response actions at military ranges integrates site assessment functions into a process that allows for an informed decision on how to best manage the risks posed by military munitions and other constituents at the range. Furthermore, the range response process as outlined in this proposal relies heavily on taking prompt action to address risks. One of the principal ways the range response process will achieve this is through implementation of ARs. ARs use readily available means to address the identified risks posed by UXO or other constituents (e.g., access controls, techniques to reduce the migration potential of other constituents), while continuing the assessment of the range to determine the need for subsequent actions, such as detailed studies or implementation of more complex solutions. Under this process, the decision whether to carry out an AR occurs as soon as there is enough information showing that conditions warrant such action. Further assessment of range conditions would focus on gathering additional data to assess the effectiveness of the AR, as well as on identifying other problems. Any further assessment must support decisions on how to address the identified risks remaining at the site. Should site conditions suggest a need for additional studies or responses, these can take place either through continuation of the RA/AR phase or, if these studies or actions require long periods to conduct or implement, by proceeding to the RE/site-specific response evaluation (SSRE) phase.

As can be seen from the overview flowchart in figure 1, the Department of Defense is providing the public, American Indian tribes, and regulatory agencies opportunities for involvement or access to information at every step of the process. The Department of Defense sees early and frequent interaction with the public and government agencies (including American Indian tribal governments) as essential to the success of this process, as it not only enhances risk management decisionmaking but also helps prevent disputes over the actions taken. Emphasis is placed on public, regulatory agency, and American Indian tribal involvement throughout the process.

3. Programmatic Concepts

a. *Public and government agency involvement:* In this proposal, the Department of Defense has committed to involving the public and government agencies throughout the range response process. The process provides for this involvement through widely accepted mechanisms such as public notice and comment periods, public meetings, and public availability of information. It also expands on these basic mechanisms through making information on each range as readily accessible to the public and government agencies as is practical, and by offering opportunities for public, government agency, and American Indian tribal interaction directly with the project team conducting the response. Where public interest is sufficient, the public will be involved through implementation of a public involvement plan (PIP) that is not inconsistent with CERCLA.

There are several mechanisms that the Department of Defense intends to use to involve the public, Federal and State regulators, American Indian tribes, and other Federal agencies in the range response process. These mechanisms are not inconsistent with the public participation requirements under the CERCLA program and, as with CERCLA, occur at various points in the process. In general, these requirements (described in greater detail later in this proposed rule) seek to: (1) Make information on response activities publicly available; (2) keep the public and appropriate Federal, State, and local agencies and American Indian tribes aware of planned and completed actions; (3) solicit written comments from the public and government agencies on proposed actions, and provide a responsiveness summary for public comments before the final decision to proceed; and (4) provide an opportunity for concurrence by the appropriate Federal and/or State environmental regulatory agencies, American Indian tribe, and Federal land manager. The responsible DoD component will also be responsible for operating an information repository where the public will have access to releasable documents. An administrative record for all actions will be included in the information repository.

As part of its effort to provide for meaningful regulator and public participation in the site-specific range response process, the Department of Defense will provide a technology education program to assist regulators, American Indian tribes, and the public in obtaining a layperson's understanding of the complex subject of UXO detection and removal technology. The objective of the program is not to make the participants experts in the science of UXO detection and removal technologies, but rather to increase their general knowledge. At the RA/AR phase, the responsible DoD component will provide an explanation of available UXO detection and remediation technologies to the Restoration Advisory Board (RAB) or Extended Project Team (EPT). This program will consist of a focused presentation (2 to 8 hours in duration) on current UXO detection and removal technologies and, if necessary, technology update presentations (2 to 4 hours in duration) to capture significant technology advancements that have been made since the initial presentation. The program's objective will be to increase the participants' general understanding of the science, its capabilities and its limitations.

In addition to these means for involving the public and government agencies, the Department of Defense also is examining other mechanisms for making information readily accessible. First, as part of the identification phase of the range response process, the Department of Defense will identify an official point of contact (POC) for each range addressed under these provisions. Whenever there is an inquiry by the public, a tribe, or a Federal, State, or local agency, the POC will be responsible for providing any relevant and releasable information, or for providing a formal written response explaining in detail why that information was not provided.

Second, the Department of Defense plans that the information contained in the range inventory and tracking system to be established under the provisions of proposed § 178.6(a)(1) will be readily accessible to the public, possibly including via the internet. The Department of Defense is also examining the practicality of making information about specific ranges (e.g., reports, updates, decision documents) available through this same venue. In the final rule, the Department of Defense will specifically address the types of information that will be available through the internet and how to obtain it.

Third, as part of the identification phase, the Department of Defense proposes that it will submit for inclusion in the permanent land record at the local jurisdiction level for a parcel of land identified as a closed, transferred, or transferring range, a formal notice addressing: (1) The identification of the parcel of land as a known or possible military range, including the unique identifier and common name assigned to that range; (2) a statement that the land may have been a military range; (3) a statement about the potential hazards associated with military ranges; (4) the DoD component to contact for additional information. As the range progresses through the range response process, the

Department of Defense will append summaries of information contained in formal decision documents to this notice.

Where RABs exist or can be established, they will be utilized to involve the regulators, American Indian tribes, and the public in this rule's proposed process. If a RAB does not exist and sufficient interest to establish a RAB is not obtainable, a mechanism the Department of Defense is considering to involve the public and government agencies is the use of EPTs. When a RAB cannot be established, the Department of Defense will identify interested members of the community from the RAB solicitation process and seek support for the establishment of an EPT. An EPT is a highly focused subcommittee similar to a RAB.[7] While most RABs address installation-wide remedial activities, an EPT is intended to involve the public and other agencies at the individual military ranges where response actions are planned and implemented. A primary objective of the EPT is to develop a common understanding of the scope and proposed approach to the upcoming range response activities. Under this concept, the EPT consists of the DoD staff and contractors responsible for planning, conducting, and implementing response actions at a specific range (i.e., the internal project team)[8]; specific representatives of the public (where a RAB exists, EPT representatives would be nominated from the RAB; where a RAB does not exist, EPT representatives would be nominated from interested members of the community); specific personnel from Federal and State regulatory agencies (e.g., environmental regulatory personnel, as identified by their respective agency); and American Indian tribes and others with direct technical expertise or a significant interest in the results of the action.

EPT meetings should provide opportunities to: (1) Communicate the initial understanding of the range and the project team's initial approach for planning and conducting a response; (2) identify issues of concern; and (3) solicit viewpoints. The success of an EPT depends largely on the commitment of all the parties to consistent and continued involvement. With such a commitment, the EPT becomes the primary forum for presentation and discussion of identified problems, recommended solutions, and unresolved concerns to the public and the other Federal or State agencies. Through this exchange, the Department of Defense can address public, government agency, and tribal concerns as the response process proceeds, rather than at its conclusion. The Department of Defense believes that the use of EPTs not only will foster mutual exchange of ideas, concerns, and technical information at the working level, but also will allow DoD decision-makers the opportunity to redirect planned response actions as necessary before committing to a course of action. The Department of Defense will also consider other forums for public involvement as the specifics of the site and the interest of the community dictate. The EPT will be conducted in a manner that is consistent with the final published rule on RABs, which was proposed on August 6, 1996 (61 FR 40764–40772) and is planned to be published in calendar year 1997.

In § 178.14 of this proposed rule, a concurrence role is included for Federal and/or State environmental regulatory agencies, American Indian tribes, and Federal land managers when a response will be conducted on a closed, transferred, or transferring range under their jurisdiction, custody, or control. The concurrence role specifically applies to Federal and/or State environmental regulators, American Indian tribes, and Federal land managers, as appropriate. Regulatory agencies are given a concurrence role because other regulatory authorities may apply to a military range. Federal land managers are given a concurrence role due to the independent statutory authorities they have pertaining to lands under their jurisdiction, custody, or control. American Indian tribes are a given a concurrence role in order to provide them with substantially the same role as States. Specifically, the Department of Defense will seek review of and concurrence on the draft decision document identified in § 178.14(d) in this proposed rule. In addition, the Department of Defense will seek concurrence on the RA work plans identified under § 178.7(b)(2). Technical impracticability (TI) and no further action determinations, as well as requests for applicable or relevant and appropriate requirements (ARAR) waivers, will be contained in the draft decision document appropriate to the specific response phase underway, and thus will be provided for review and concurrence. Procedures for ARs described in § 178.7(e)(4) are not inconsistent with time-critical removals taken under CERCLA, and the Department of Defense intends to apply the same administrative procedures as those that are applicable to CERCLA time-critical removals. However, the Department of Defense does not intend to ask for concurrence on these AR decision documents, but does intend to make them available for comment.

Section 178.14 provides for document review times of 45 days. This will allow the response process to progress more rapidly. Additionally, § 178.14 of this rule encourages the use of site-specific or area-wide agreements between the Department of Defense and Federal or State environmental agencies, the Department of Defense and American Indian tribes, or the Department of Defense and Federal land managers. These agreements may modify, upon mutual agreement of the parties, the review times and dispute resolution procedures, as well as cover other pertinent issues. If nonconcurrence is received, then dispute resolution will be invoked. If no written response is received by the responsible DoD component within the established review period (including extension, if applicable), then the responsible DoD component may proceed with a range response action or invoke the dispute resolution process, or both.

The Department of Defense requests comment on the general mechanisms described for involving the public and government agencies and seeks specific comments on establishing EPTs. The Department of Defense requests that commentors provide specific recommendations on mechanisms to identify public and government agencies that might be interested in

[7] DERP, at 10 U.S.C.2705(d), states that the Department of Defense may permit the establishment of a restoration advisory board in connection with an installation (or group of installations) where [the Department of Defense] is planning or implementing environmental restoration activities.'' Since this proposed rule establishes a formal process for planning and implementing response actions at military ranges, creation of EPTs within existing RABs (or establishment of a RAB for this purpose) will be utilized to the maximum practicable extent and in accordance with DoD policies and guidance on the establishment of RABs.

[8] The project team consists of the responsible DoD component and, as appropriate, the Federal land manager(s). Federal land managers will have direct access to information through the project team. The project team will have meetings, conference calls, and/or other methods to ensure regular communication and input. The project team is responsible for:

(1) Scoping of the response action, including but not limited to, problem definition, establishing data quality objectives, selection of response alternatives for evaluation, and project planning.

(2) Preparing all necessary planning documents for conducting the response.

(3) Preparing all reports (including recommendations on appropriate responses) and decision documents related to the response.

(4) Managing the project for purposes of assignment of responsibilities to any subteams, budget, procurement, allocation of resources, and resolution or elevation of disputes.

(5) Coordinating response activities with the EPT, the RAB, or other forums for public involvement.

participating in EPTs, especially groups that represent the public.

b. *Development of a risk assessment model for use at ranges:* The Department of Defense recognizes that there is an urgent need to develop a risk assessment model for military ranges in order to carry out the requirements of these regulations. Although there are already several risk assessment models for ranges under various stages of development, none comprehensively address the risks posed by both military munitions and other constituents. In implementing these provisions, the Department of Defense intends to develop a model or protocol that: (1) Addresses the risks posed by military munitions and UXO and (2) incorporates to the maximum extent possible the models EPA has developed for assessing the acute and chronic risks posed by releases at CERCLA and RCRA sites. The Department of Defense does recognize that completing this model/protocol by the promulgation date of this rule is a very ambitious objective. Should the Department of Defense not be able to finalize the risk model/protocol, an interim model/protocol will be put into place before the promulgation date of this rule. The Department of Defense will develop the model/protocol in consultation with EPA and also will seek input from Federal land managers, States, American Indian tribes, and the public in the development of the model/protocol. The Department of Defense will seek public input by publishing a notice of availability of the interim and/or draft final version of the risk model/protocol. The notice will provide for public comment on this guidance document. Further, the Department of Defense plans to develop a streamlined version of this model/protocol to use as a screening tool, as EPA did with its streamlined version of the Hazard Ranking System (HRS) for screening sites during the CERCLA response process. This streamlined version will rely more on qualitative information than quantitative information. The primary use of this streamlined model/protocol will be to focus the RA/AR process and to assess the need for implementing ARs. The decision to utilize the more detailed risk assessment model/protocol (versus solely the streamlined version) will be made by the Department of Defense in consultation with regulators and the RAB or EPT.

In the explosives safety element of the model/protocol, the Department of Defense plans to consider the following types of factors:

(1) The specific type(s) of military munitions employed on the range.

(2) The quantity of each type of munition employed.

(3) The fuze types used on these military munitions.

(4) The density (i.e., spatial distribution) of UXO on the range.

(5) The estimated depth of the military munitions (based on penetration data).

(6) Public access to the range (i.e., likelihood of exposure of the public).

(7) The terrain, vegetation, soil type, and climate.

(8) Current and anticipated land use.

In the other constituents element of the model/protocol, the Department of Defense plans to incorporate many of the factors considered in the HRS and EPA's ''Risk Assessment Guidance in Superfund (RAGS).'' In general, these models assess the risk posed by the site based on:

(1) The identity and concentration of the constituents known or believed present at the site.

(2) The environmental setting of the site (e.g., surface and groundwater features, soils and geology, terrain, climate, vegetation).

(3) The human and environmental receptors potentially exposed at or near the site.

(4) The exposure pathways of concern (e.g., direct contact, inhalation, ingestion).

(5) The known or suspected acute and chronic hazards posed by exposure.

(6) Current and anticipated land use.

The Department of Defense requests recommendations on additional factors to consider in both the explosives safety and constituent elements of the model/protocol. Further, the Department of Defense solicits recommendations on whether it should integrate these explosives safety and environmental protection elements into a single, unified model.

c. *Technical impracticability:* At a limited number of sites, the Department of Defense foresees that explosives safety concerns and limitations of existing UXO detection and destruction technologies may lead to consideration of site-specific remedies that are limited to institutional controls and monitoring. Institutional controls, such as fences or barriers to control public access, would be implemented to restrict access to unsafe areas and thereby limit the explosives safety risks and constituent threats to human health. Monitoring would be implemented to ensure that constituent releases do not migrate to where they pose unacceptable risks to human health and the environment. At other sites, safety and technical considerations may allow a limited, active response in conjunction with institutional controls and monitoring.

A TI determination may occur during the site evaluation and response action process. An example where active response actions may not be technically practicable is a water range that may be too deep to allow investigation or implementation of an accelerated or site-specific response using current technologies. Other conditions may exist at range sites where it is readily apparent that on-range response actions are technically impracticable due to explosives safety concerns or lack of adequate technology to address the site conditions. Where it is readily apparent, as in the deep water range scenario, that it is technically impracticable to implement active response actions, the Department of Defense may make a TI determination and approve only institutional controls without initial attempts to actively remove UXO from the range. Conversely, there may be range sites where the Department of Defense will extensively investigate and evaluate site conditions and feasible alternatives, implement active response actions, and subsequently discover that the site conditions render a particular type of response action technically impracticable due to explosives safety or technological limitation concerns.

As discussed later in this proposed rulemaking, the Department of Defense proposes to use a range response process that is similar to the NCP process developed by EPA for sites addressed under CERCLA. In arriving at a TI determination, the Department of Defense proposes to develop a TI recommendation that would be included in the appropriate report for the applicable phase or stage of the range response process. The TI recommendation will address the specific information and analyses necessary to support a TI decision and recommendations for actions that may be needed to prevent deterioration of the environmental conditions at the site. These actions may typically include measures to prevent further environmental degradation, implementation of management and institutional controls, and continuation of adequate monitoring to ensure that constituent releases do not migrate from the range and that the constituents left in place do not pose a risk equal to or greater than the explosives safety risk. Reports supporting TI recommendations are subject to review and comment (see § 178.14(c) of this proposal). Decision documents recommending TI determinations are subject to

concurrence (see §§ 178.14 (d) and (e) of this proposal).

The Department of Defense will seek regulator and American Indian tribe concurrence and will consider public comments received on the TI recommendation in deciding whether to approve a TI determination. The Department of Defense will issue a formal decision document if the TI recommendation is approved at the DoD level. A notice of availability for any report containing a TI recommendation will be published. The decision document for such a report, recommending a TI determination, will explain the basis for the decision, a synopsis of comments received and the Department of Defense's responses to relevant comments, any conditions required as part of the TI determination, and the frequency of subsequent periodic reviews (''recurring reviews'') to reevaluate the TI determination. (Recurring reviews are discussed in more detail later in this proposed rule.) The recurring review would determine if: (1) The control measures in place are functioning adequately, and (2) advances in UXO detection or destruction technologies can acceptably reduce the explosives safety risk posed to personnel entering the site. If the recurring review process indicates that the reasons for having issued the TI determination can be overcome, the Department of Defense will reevaluate the need to pursue additional response actions for the range sites. If practicable from a safety and technological viewpoint, the Department of Defense will implement the new response action based on advances in technology.

The concept of TI determinations to forgo certain response actions due to safety or technological limitations is not novel. For example, although used in a different context and on a more limited scale, EPA has previously issued guidance on evaluating the technical impracticability of groundwater restoration at certain sites having hydrogeologic constraints or contaminant-related factors that severely impede the success of active restoration. (For an example, see Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration, Interim Final, OSWER Directive 9234.2–25 [9] (September 1993)). Under appropriate conditions, EPA's guidance allows a waiver of Federal or State cleanup standards that otherwise would be normally required for groundwater restoration efforts under CERCLA. EPA's guidance also allows selection of alternative remedial technologies commensurate with the waiver of the cleanup standards. Due to the extreme safety risks associated with range sites containing UXO and the limited detection technology currently available for effectively locating UXO, the Department of Defense proposes to use EPA's TI waiver concept to implement appropriate and protective institutional controls and to periodically review the practicability of implementing additional response actions.

[9] Copies of EPA's ''Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration, Interim Final, OSWER Directive 9234.2–25'' (September 1993) can be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (telephone 703–487–4650).

E. Detailed Discussion of the Phases of the Range Response Process

1. Identification of Closed, Transferred, and Transferring Military Ranges

The first phase of the range response process is the identification of closed, transferred, and transferring ranges. In this phase, a list of the ranges subject to these requirements will be developed. Proposed § 178.6, Identification of closed, transferred, and transferring ranges, defines the specific requirements for the identification phase of the range response process.

a. *Identification and establishment of a tracking system:* In summary, upon the effective date of these regulations, the Department of Defense will undertake a coordinated effort to identify all land and water areas potentially subject to these provisions. This information will form a permanent record and centralized tracking system for closed, transferred, and transferring military ranges. Such a system provides a valuable tool for the Department of Defense's internal use in managing the program. Furthermore, the Department of Defense intends that the information in this tracking system be readily accessible to the public and other governmental agencies. As mentioned before, one alternative the Department of Defense intends to examine is whether the internet could serve as a means for public access to the tracking system.

The Department of Defense believes the following information about each range is the minimum necessary to include in this tracking system:

(1) A unique identifier for the range.

(2) The common name for the range.

(3) The status of the range (i.e., closed, transferring, transferred).

(4) The name, address, and telephone number of a POC at the Department of Defense or Military Service organization with responsibility for implementing the range rule at that range.

(5) The States and counties (including independent cities and towns) in which the range lies.

(6) A representation or description of the range showing its location, boundaries, and areal extent.

(7) The general type(s) of military munitions used on the range (e.g., artillery, small arms, naval gunnery).

(8) A list of parties other than the Department of Defense or a military department with ownership interest in or governmental administrative control of the land or its resources.

The Department of Defense requests comments on these basic information requirements, specifically with respect to recommendations for additional information to include in the centralized tracking system. In addition, the Department of Defense requests recommendations on other mechanisms for making this information accessible to the public. The Department of Defense plans to update the tracking system, including the priority assigned to each range, at least once per year to indicate which military ranges have entered the RA/AR phase and which ranges have been identified for entering the RA/AR next.

b. *Notices in official land records:* This proposal makes use of current DoD recordkeeping practices. For example, permanent records are required for each range area. These records indicate known and suspected range areas, and identify military munitions used, their hazard, quantity, locations, and UXO rates. Another example is that transfer records are required to detail past ammunition and explosives use, provide information on other constituents present, and advise the user not to excavate or drill in range areas without a metal detection survey. This information is required to be entered in the permanent land records of the civil jurisdiction in which the property is located. To the extent to which any of these records are available for closed, transferred, or transferring ranges, they will be used in the range identification process.

Following identification and collection of sufficient information about the location and boundaries of a range identified under these provisions, the Department of Defense will examine the appropriate land records. A formal notice in the official local land record for that range should include, at a minimum:

(1) The proper legal description of the land that was or may have been used as a military range, including the unique

identifier and common name assigned to that range.

(2) A statement that the land may have been a military range.

(3) A summary description of the hazards commonly encountered at military ranges (e.g., UXO).

(4) The DoD component to contact for additional information about that range.

Upon analysis of additional information and the implementation of accelerated or site-specific responses, the Department of Defense will update this notice to reflect the current conditions at the range.

c. *Supply of information to Federal mapping agencies and State and tribal geographic information systems (GIS):* The Department of Defense also plans to provide certain information on the ranges identified under these requirements to those Federal, State, and Native American tribal agencies charged with the development and distribution of official maps and charts. The Department of Defense will recommend that these agencies include in updates to these maps and charts a means of delineating these areas, as well as several pertinent pieces of information. This information includes the unique identifier for each range, the name of the DoD organization with responsibility for implementing these provisions on that range, and a brief statement of the potential hazards associated with entry into these areas. In addition, the Department of Defense requests comments as to whether this information would be useful to local governmental entities with mapping or zoning responsibilities or to private firms that prepare and print maps for public distribution. If the commentor believes this to be the case, the Department of Defense requests the commentor's recommendations on means to provide that information to those entities.

d. *Prioritization for range assessment/accelerated response:* While the Department of Defense believes that, immediately following their identification, all ranges should enter the RA/AR phase of the range response process, current fiscal realities show a need for a system to determine the order in which ranges enter the RA/AR phase. Of the various approaches available, the Department of Defense believes that one consideration for ranking these ranges for entry into the RA/AR phase is the degree to which the Department of Defense or a Military Service can control access to the area, since this is one simple yet effective means of managing the potential risk posed by the range. Access control sets forth a basis for prioritization, but other environmental factors will be considered, such as imminent hazards, and the likelihood of release migration within 1 year.

Based on the consideration of access controls and risk management, the first group of ranges that would be addressed are those already transferred from DoD control, because the Department of Defense has the least ability to exercise control over those areas. The second group would be the ranges planned or scheduled for transfer from DoD control; these ranges are still subject to DoD control, but failure to transfer the range in a timely manner can impact other activities, for example a land transfer under BRAC Act provisions. The final group will be those ranges that, while closed, are still under DoD control. The Department of Defense recognizes, however, that other factors may influence the need to conduct a response action. Therefore, in determining which ranges will enter into the RA/AR phase, the Department of Defense will consider factors relating to safety and environmental hazard potential, such as:

(1) Whether a site access can be controlled and the population is at risk.

(2) The potential for direct human contact and evidence of people entering into the range area.

(3) Whether a response action has been or is being taken at that range under the FUDS program or other environmental restoration programs.

(4) Planned or mandated dates for transfer of the range from DoD control.

(5) Documented incidents involving UXO or off-range releases of other constituents from the range.

(6) The potential for drinking water contamination.

(7) The potential for destruction of sensitive ecosystems.

(8) The potential for damages to natural resources.

(9) The potential for releases to the air.

(10) The degree of public interest in the range.

(11) The degree of Federal land manager interest in the range.

(12) The degree of state or Federal regulator or American Indian tribe interest in the range.

The priority assigned to each range is another element the Department of Defense plans to include in the tracking system. The Department of Defense plans to update the tracking system, including the priority assigned to each range, at least once per year to indicate which military ranges have entered the RA/AR phase and which ranges have been identified for entering the RA/AR next. The Department of Defense solicits comments on this approach to prioritizing military ranges, with specific emphasis on other factors to consider when assigning a priority ranking to a given range.

e. *Public and government agency involvement:* One of the basic requirements the Department of Defense established when developing this proposal was the commitment to involving the public and government agencies in each phase of the range response process. The responsible DoD component will work with the community to provide information concerning response activities, respond to inquiries, and provide information concerning the conditions at the range. The responsible DoD component will notify, at a minimum, immediately affected citizens, State and local officials, and, when appropriate, civil defense or emergency management agencies. During the identification phase, one of the primary goals is to ensure public access to information on each range subject to these requirements. The Department of Defense does, however, recognize an additional opportunity for public and government agency involvement during this phase. The Department of Defense proposes allowing public and government agency submission of documents identifying the location of closed, transferred, or transferring ranges. Upon verification of the accuracy of such submissions, the Department of Defense would enter that range into the tracking system of ranges subject to these provisions.

The Department of Defense solicits comments on additional mechanisms to involve the public and government agencies in the identification process and means to provide access to information about ranges identified subject to these requirements.

2. Range Assessment/Accelerated Responses

One goal of the RA/AR is to determine the condition of the property. Another goal of the RA/AR phase is finding ways to accelerate the response process by delineating areas within the range where response activities are necessary and by limiting the effort spent collecting data to only the level necessary to address the uncertainties that accompany prompt action. The Department of Defense intends that the RA/AR phase use readily available information to determine if additional investigation or implementation of an AR is warranted, based on range conditions. Therefore, the RA/AR phase is dependent on: (1) Identification of the types and sufficiency of data needed for

an informed risk management decision; (2) the ability to implement ARs when appropriate; and (3) analysis of information to know when (a) enough information either has been or cannot be gathered to make an informed risk management decision, and (b) when an identified risk can or cannot be addressed by an AR. The Department of Defense will be issuing detailed guidance on how to conduct the RA/AR phase and believes that it will be possible to develop standardized procedures and reporting requirements for RA/AR activities.

For clarity, the following discussion presents the RA and AR separately. However, the Department of Defense intends for them to be concurrent, interrelated activities.

a. *Range assessment:* The RA is a limited-scope investigation designed to distinguish between ranges, and areas within ranges, posing little or no safety, human health, or environmental risks and ranges, or areas within ranges, that do pose such risks. Ranges that pose a risk warrant further investigation or implementation of an AR. The Department of Defense intends that the initial effort in an RA be a compilation and analysis of existing information about the range and its surroundings, similar to the CERCLA preliminary assessment or a RCRA facility assessment. The RA emphasizes collection of available information through a combination of file searches and ''desktop'' information collection and analysis. If, based on analysis of the existing information about the range, collection of additional information is believed necessary to better delineate the range or areas within the range where response activities are warranted, then visual inspection of the range or sampling of environmental media may be undertaken to provide an improved understanding of the conditions at the range. The Department of Defense will be issuing guidance on the specific requirements and procedures for conducting an RA.

(1) Scope of the range assessment. The Department of Defense envisions implementing the RA by conducting several levels of information collection and assessment. The first level of the RA is to determine if the range is subject to these requirements and if there is readily available information suggesting that the range poses a hazard. This usually can be done by reviewing the official records of the installation, local records, or other references. Such documents are often the primary source of information on range locations and operations conducted at those ranges.

If in fact the area was or is a military range subject to these provisions, the next phase of the RA is collection of information on the types and quantities of military munitions employed at the range. At a minimum the Department of Defense sees a need for the following types of information:

(1) The type(s) of military munitions employed on the range.

(2) The estimated quantity of military munitions employed.

(3) Time frames during which the military munitions were employed on the range.

(4) The chemical constituents of those munitions.

(5) The fuze types used on these military munitions.

(6) Identification of locations within the range where these military munitions are known or suspected to have been employed.

(7) The estimated density of UXO in those locations.

(8) The estimated depth of the munitions (based on penetration data).

(9) Information on range clearance operations or reported incidents involving UXO on the range.

(10) Safety issues related to military munitions employed on the range.

(11) The type(s) of any targets that may have been used on the range.

(12) Other past and present uses of the range.

This information feeds into the assessment of the risks posed by the military munitions and UXO potentially found on the range.

One of the critical early efforts during the RA is the identification and delineation of areas within a range that pose varying explosives safety hazards and environmental threats. Delineation procedures will adequately define different types of range areas. Delineation of range areas would likely include, but not necessarily be limited to: Impact areas; buffer zones; firing areas; maneuver areas; military munition stockpile areas; open burning/open detonation areas; disposal areas; and any other areas of concern (including off-range areas where constituents may have migrated from on-range sources). Environmental threats can include, but are not limited to, chronic, mutagenic, or teratogenic effects.

A goal of this effort will be to identify areas with a higher explosives safety risk from those areas that are either unaffected or minimally affected. Once delineated, a range area would proceed through the five-phase process independently of other areas. For example, an impact area with a high explosives safety risk that is confirmed to be too dangerous to assess or remediate would proceed on a distinctly different path through the five-phase process than would an adjacent buffer zone that was confirmed to have a lower explosives safety risk but has significant quantities of other constituents. The buffer zone and other site areas that fit into this category would, as a group, proceed to the RE/SSRE phase, where focused characterization and response activities ultimately would take place.

Another goal of range delineation during the RA will be to assess what ARs can be implemented at areas geographically outside ranges with a high explosives safety risk, but where constituent levels from employed munitions or other constituents are significant. It is likely that all ranges will include areas with a lower explosives safety risk, where characterization and possible response efforts may be feasible in order to provide for incremental risk reduction. This will serve to specifically address releases from other constituents.

If the Department of Defense, in consultation with the RAB and/or EPT, determines that any of the following conditions exist, the affected portion(s) of the range should proceed without delay to the RE phase. These conditions are (1) that the range presents issues that are too complex to be addressed in the RA; (2) that all or part of the range poses an imminent threat to human health or the environment which cannot be mitigated effectively through an AR; or (3) that an AR had been implemented but substantial environmental threats remain.

To address the risks posed by other constituents, including CERCLA hazardous substances, known or suspected to be present on the range, the Department of Defense will use existing information on the constituents identified during the assessment of the military munitions employed on the range and any other potential constituents identified from other activities on the range. The goal of this aspect of the RA is to develop an initial ''target'' list of constituents and to suggest locations for sampling for use in later phases in which environmental samples may be collected and analyzed; to identify the corresponding ARARs; and to address the ability of that RA to meet the ARAR requirements and protect human health and the environment. This assessment also will collect readily available existing information on the identity, concentration, and characteristics (e.g., toxicological, fate and transport) of the identified constituents. This information feeds into the initial

assessment of the risk posed by other constituents at the range.

The RA also will require collection of existing data on the environmental setting of the range, the location and identity of receptors potentially impacted by the range, and specific routes of exposure of concern. Specifically, the RA involves collection of existing information on such factors as:

(1) Local hydrologic and hydrogeologic conditions (which includes groundwater).

(2) Soils and geology.

(3) Terrain.

(4) Climate and meteorological data.

(5) Vegetation.

(6) Current and predicted land use.

(7) Cultural resources.

(8) Receptors (i.e., humans, ecological receptors).

(9) Exposure pathways of concern (e.g., direct contact, inhalation, ingestion, or exposure to radionuclides).

The Department of Defense believes that a significant portion of the information needed to address these factors is available from existing sources such as topographic maps, aerial photographs, on-line databases, and published studies.

The preliminary phases of the RA, which depend primarily on existing information, can suggest that a visual inspection of the range or limited-scale sampling of environmental media is necessary to develop a more complete understanding of the conditions at the range or to better delineate areas requiring response activities. In either case, entry onto the range requires the development of an explosives safety plan and submittal of the plan to DDESB for coordination. If the information suggests a need for sampling of environmental media, the DoD organization conducting the response should develop a work plan describing the objectives and plan for conducting the sampling, including the standard operating procedures (SOPs) to be used for the range response. Typically, the plan for sampling and analysis of environmental media will use a format similar to the one used when conducting these activities under a CERCLA response or RCRA corrective action.

Once collected, the information on the military munitions employed at the range, the other constituents believed present, and the environmental setting of the range serves the following purposes:

(1) Identification of any actual or potential threats posed by the site (e.g., reported incidents involving UXO, documented releases of other constituents from the range).

(2) Initial assessment of the identified risks posed by the military munitions and other constituents on the range, with a qualitative identification of the source-pathway-receptor chain and UXO density potential.

(3) Focus of follow-on studies or monitoring.

(4) Assessment of the need to implement ARs.

(2) Accelerated responses. An AR is any readily available, proven method of addressing the identified risks posed by military munitions or other constituents at ranges subject to these requirements. Some examples of ARs include:

(1) Posting signs warning of the danger associated with range.

(2) Erecting fences or other measures to control access.

(3) Implementing simple erosion controls (e.g., silt fences).

(4) Suspending incompatible land uses (where the Department of Defense can do so).

(5) Implementing community education and awareness programs.

(6) Requiring ''dig permits'' at areas where the Department of Defense has control over site activities.

(7) Conducting source removals or surface sweeps for UXO.

(8) Implementing deed restrictions.

(9) Implementing a monitoring program (for example, to assess if constituents are migrating off the range in stormwater runoff or percolating into groundwater).

(10) Providing alternative sources of drinking water.

(11) Performing other effective engineering, institutional, or exposure controls.

This is by no means a complete listing of the types of ARs available to address the identified risks posed by ranges. The Department of Defense plans to develop detailed guidance on ARs in the near term which will be not inconsistent with CERCLA.

The Department of Defense sees merit in using the same criteria for evaluating AR alternatives and for evaluating more complex and tailored site-specific responses. A later section of this proposal provides a detailed discussion of these criteria. The primary differences are in the scope of the evaluation of alternatives, and that the AR analyses rely on qualitative rather than quantitative information. In these ways, the AR process is similar to the process identified in the NCP for non-time-critical removal actions (at least 6 months' planning time) and time-critical removal actions (less than 6 months' planning time). For example, the process for selecting an AR is similar to the engineering evaluation/cost analysis performed as part of non-time-critical removal actions identified in the NCP.

In general, using the data collected during the RA, this process will be a qualitative evaluation of the source-pathway-receptor link that creates the risk. These data will be analyzed to determine which AR options would most effectively sever that link or reduce its impacts.

(3) *Public and government agency involvement*. Before beginning the RA/AR phase, the DoD organization responsible for that range will send a written notice to the appropriate Federal, State, and local officials and American Indian tribes informing them that these activities will be starting. This notice will also request that these officials name a POC within their organization and identify that POC to the project team.

Throughout the RA/AR phase, the public, government agencies, and American Indian tribes will have access to validated information about range conditions, the potential hazards posed by the site, and any ARs undertaken to address those hazards. In addition, the public will have access to RA/AR reports and decision documents. Usually, access to this information is through the information repository; however, unresolved questions or concerns can be taken to the DoD POC or to the EPT, if one exists. Other venues for information exchange are the RAB (if one exists), and/or informal meetings with community leaders or other government officials.

For all ARs where implementation of an on-site action is expected to take more than 120 days to complete, within that period the responsible DoD component will conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved in the range response process. The Department of Defense also will prepare a formal PIP based on community interviews or other relevant information, specifying the public involvement activities that are needed during the response.

Before undertaking an AR, the DoD organization responsible for the activities at that range will formally document its decision. This document will briefly summarize conditions at the range, explain the hazards the AR was to address, and provide other useful and relevant information.

Except where an emergency response is required to address an imminent

threat to human health or the environment, the public, regulators, American Indian tribes, and (where appropriate) Federal land managers will be provided a reasonable opportunity to comment on proposed RA/AR actions, based on information included in the RA/AR report. This report will be subject to a 45-day review and comment period prior to implementation of the AR. If requested, the Department of Defense also will hold a public availability session. If the physical construction associated with an AR, including implementation of site access control measures, is reasonably expected to be completed within 120 days of the commencement of the AR (i.e., completion of the RA), the opportunity for review and comment may be provided during or when the AR has been implemented. While an AR might be fully protective, the majority of ARs will be interim responses by nature, particularly those for which the physical construction is reasonably expected to be completed within 120 days of commencement. In cases where an AR is expected to be fully protective and to make a site-specific response unnecessary, public participation through review and comment on the RA prior to implementation of the AR should be afforded, even when the AR can be implemented within 120 days.

3. Evaluation of Range Assessment/Accelerated Response Results

As discussed in Section IV.E.2 of this preamble; one goal of the RA/AR process is to couple existing information with a limited gathering of additional information to make informed risk management decisions at the range. If the range poses a hazard, ARs, as appropriate, can be taken to address that hazard. This process continues until enough information is available to make an informed risk management decision (or, alternatively, the effort necessary to collect that information is beyond the scope of the RA); and all identified hazards have been addressed through implementation of an AR (or a determination has been made that ARs are unable to address the identified hazards).

Once at this point, the DoD organization conducting activities at the site may implement a time-critical AR or will make the RA/AR report available for comment and will then issue a decision document for the proposed action. The RA/AR report will document the findings of all assessment activities and the reasons for and effectiveness of each AR at the range. The RA/AR report will also make one of the following recommendations:

(1) Issue a determination of no further action (typically where the area was not a range or there is no appreciable risk associated with the range).

(2) Conduct recurring reviews because all identified risks have been effectively managed and are expected to remain effectively managed in the long-term.

(3) Conduct an RE because of a need for additional information to make an informed risk management decision or in anticipation of a site-specific response to address the remaining hazards.

(4) Issue a TI determination because, while a risk remains, there are no alternatives available capable of addressing the identified risk. For example, a TI determination would be appropriate at a naval gunnery range located in deep water (i.e., over 300 feet deep), where existing technology is not available to effectively implement a response. Another example would be an artillery range with a large number of UXO located in a small area of rugged terrain where manual clearance is required. Due to the density of the UXO, entry into the area may be too hazardous to undertake; clearance of one UXO by detonation may lead to sympathetic detonation of nearby rounds, due to the proximity of the UXO item to other UXO items. This situation would present an unacceptable explosives safety risk, in that the sympathetically detonated round may undergo a low-order detonation, scattering unconsumed explosives over a wide area, worsening the problem. In a case such as this, not directly addressing the UXO while implementing other types of control measures may be the most appropriate response action. Typically, recommendations for other appropriate control measures and recurring reviews will be a part of a recommendation for the TI determination.

Once the draft RA/AR report is complete, the Department of Defense will include it in the administrative record and make it publicly accessible at the information repository. The Department of Defense also will publish a notice of availability of the draft RA/AR report and brief description of the action being proposed in the report in a major local newspaper of general circulation and announce a 45-day period for submission of written comments to the DoD POC for that range. If requested, the Department of Defense will hold a public meeting or availability session. Following the comment period, the Department of Defense will develop written responses to significant comments received during the comment period, consider any issues brought out by these comments, and prepare a formal decision document outlining which recommendation will be adopted. A copy of the decision document and all supporting information will become a part of the administrative record for the military range, and the Department of Defense will mail a copy of the decision document to all appropriate government agencies and the current property owner.

4. Range Evaluation

REs are detailed investigations of the military munitions employed on the military range, the other constituents believed or known to be present, and the environmental setting. Generally, an RE will be performed when making an informed risk management decision requires the collection and analysis of a significant quantity of quantitative information not otherwise available. This information collection often is a complex, long-term effort (e.g., groundwater monitoring) that demands careful planning before its execution. This phase includes evaluation of site safety, and potential human health and ecological impacts. RE examples include, but are not limited to:

(1) Military ranges where chemical munitions were employed and where the RA/AR process shows a potential exposure from a chemical agent release.

(2) Military ranges where land use or the degree of public access is incompatible with the condition of the range following the RA/AR process.

(3) Military ranges with a reasonable potential for contamination of surface water or groundwater that is in excess of applicable standards and which is a potential source of drinking water.

a. *Scope of a range evaluation:* The types of information collected during the RE are similar to those collected during the RA/AR phase and serve the same purposes; however, the information collected is far more specific and typically quantitative in nature. For example, while the RA/AR phase sought information on the type(s) of military munitions employed on the range, an RE might seek to determine the specific military munitions employed. Similarly, where the RA/AR used estimates of various values such as the quantity of military munitions employed on the range and the density (i.e., distribution) of UXO, the RE uses a combination of detailed ''desktop'' evaluations and field sampling to refine the estimates.

The first step in conducting the RE is reviewing the available information to focus the RE. The Department of Defense intends all REs to be focused studies, tailored to answering specific

questions. Conducting such a focused study requires defining:

(1) The objective of the information collection effort (i.e., what question is to be answered).

(2) The boundaries of the information collection effort.

(3) The role of the data in supporting risk management decisions.

(4) The specific type, quantity, and quality of information to collect to meet the objective.

(5) The acceptable level of uncertainty (in terms of the accuracy) of the information.

For example, to assess the risk posed by the other constituents known or suspected to be present on the range, the Department of Defense will use existing information on the other constituents identified during the RA, as well as any other readily available sources. This review will provide the basis for developing a ''target'' list of potential constituents. This approach also will focus the collected information on the health and environmental characteristics of the constituents that may be present on the range. Similarly, it is possible to focus collection of information on the environmental setting. If, for example, the range is in an area where, due to an extremely high concentration of total dissolved solids, the groundwater is not useful for drinking or agriculture, it may be appropriate to limit assessment of potential groundwater impacts.

b. *The range evaluation plan:* The Department of Defense intends this focusing effort to lead to the development of a single, concise document, the RE plan. The RE plan will provide all necessary information about the objectives established for the RE, the rationale for those objectives, and how those objectives will be achieved. For example, this document would explain the focus of the RE, define the objective(s), boundaries, data uses, sampling and analysis protocols, safety, and data analysis procedures required to complete the RE. The Department of Defense will issue detailed guidance on how to conduct an RE, and believes that it will be possible to develop a standard RE plan that, with minor modifications, can be adopted for use at the majority of these ranges. The DoD organizations conducting the RE will make this document a part of the administrative record and will publish a notice of availability in a local newspaper. The notice will summarize the purpose of the document and inform the public how to gain access to the RE plan. At a minimum, the RE plan will be made available at the information repository.

c. *The range risk assessment:* The collection and analysis of additional information about conditions at the range lead to the primary purpose of the RE, a detailed, quantitative assessment of the risks posed by the military munitions and other constituents at the range. The level of risk posed by the site is one element in making an informed risk management decision about the need for a site-specific response.

In general terms, the military range risk assessment model/protocol the Department of Defense plans to develop requires similar types of information for military munitions and other constituents. These information requirements include:

(1) Identification of the source of the risk (e.g., identification of the specific military munitions or other constituents).

(2) Identification of receptors, pathways, and potential for exposure.

(3) Identification of the effects of exposure (e.g., the types of injuries that accidental explosion of military munitions can cause; the acute, chronic, and carcinogenic effects of exposure to other constituents).

While the explosives safety and other constituent risk assessments generally require similar types of information, the specific information requirements are different and reflect the basic differences between explosives safety risks and constituent releases. For example, injury from the detonation of conventional military munitions requires either direct or indirect exposure to the energy (as pressure or heat) released by the explosion, or to energy imparted to materials by the explosion (e.g., shrapnel); generally, the injury is due to physical trauma. In contrast, exposure to other constituents usually involves entry into the receptor by ingestion, inhalation, or dermal absorption, and the effects are due primarily to disruption of physical functions in the receptor. Therefore, the specific information required to assess the effects of exposure will be different.

Currently, the risk assessment models used for military munitions and UXO do not adequately address the potential risks associated with constituent exposure. Likewise, the risk assessment models for constituent exposure do not address the effects of explosions or other injuries caused by military munitions. For these reasons, the Department of Defense will be developing, in consultation with and with the assistance of EPA, a risk assessment model or protocol to use at military ranges. This risk assessment model or protocol will provide an assessment of risks posed by military munitions and UXO at the range, as well as the human health and environmental risks posed by the constituents to: (1) Provide an estimate of the risks posed by military range conditions; and (2) to serve as a tool for assessing (a) the effectiveness of a given response at addressing those risks and (b) the potential consequences (either positive or negative) of implementing a response targeted at addressing a specific risk. The Department of Defense, in conjunction with EPA, will seek Federal land manager, State, American Indian tribe, and public input during the development of the risk assessment model or protocol. Because of the importance of this model/protocol, an interim version is to be developed and made publicly available prior to the promulgation of the final rule. A final version will be developed and made publicly available no later than 1 year after the final rule is promulgated.

It is equally important to note that, since the explosives safety element of the overall range RA examines the identified risks posed by military munitions and UXO on the range, an evaluation of these risks must be conducted concurrently with the development of the RE plan, especially if on-range data collection is contemplated. Even if very limited information on potential explosives safety hazards exists, any such information is critical to assessing the practicality of on-range actions and to developing the explosives safety plan (which must be submitted to DDESB for approval before commencing any on-range activity). Like the explosives safety risk assessment, the constituent risk assessment examines the risks posed by constituents known or suspected of being present on the range. The preliminary phases of this assessment also will need to be conducted concurrently with the development of the RE plan, since the information requirements for the constituent risk assessment are critical to focusing investigative efforts. Furthermore, available data on the constituents known to be or suspected of being on the range are critical to developing a health and safety plan for on-site workers.

d. *Public and government agency involvement:* During the RE, the public, government agencies, and American Indian tribes have access to validated information about range conditions and the potential hazards posed by the site. In addition, the public will have access to the final RE report and any related decision documents. As with the RA/AR, access to this information is through the information repository, the

DoD POC, the EPT (if one exists), the RAB (if one exists), and formal or informal meetings. Furthermore, before beginning the RE, the DoD component responsible for that range will send a written notice to appropriate Federal, State, and local officials informing them that these activities will be starting.

If a formal RE report is prepared, then a 45-day public comment period on the report will occur, as well as a public availability session if requested. If the recommendation is to proceed directly to the SSRE, however, a letter report will summarize the RE findings and the public comment period will occur on the SSRE report. Following the public comment period, the Department of Defense will develop written responses to significant comments received during the comment period and consider any issues brought out by these comments. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence.

5. Range Evaluation Findings

The goal of an RE is to couple existing information with focused information collection to assess the risk posed by the military munitions and other constituents on the military range. This information is necessary to make informed risk management decisions. Once the objectives set for the RE are reached, the findings and conclusions will be presented in a formal RE report. Depending on the scope and findings of the RE, the RE report also will make one of the following recommendations:

(1) Conduct recurring reviews because the quantitative analyses demonstrated that all identified risks are effectively managed and will remain effectively managed over the long term.

(2) Issue a TI determination because, while a risk remains, there are no available alternatives capable of addressing the risk. Typically, recommendations for other appropriate control measures and recurring reviews will be a part of a recommendation for a TI determination.

If the findings of the RE demonstrate a need for a site-specific response to address remaining risks, the Department of Defense may prepare a letter report instead of an RE report and proceed directly to the SSRE. If a letter report is prepared, then the DoD organization conducting the response must prepare a formal decision document that summarizes the findings of the RE, identifies the hazards requiring a site-specific response, and describes the anticipated scope and starting of the SSRE. This decision document will be made available to the public, and concurrence will be sought from appropriate Federal, State, and American Indian tribal officials.

If, however, the responsible DoD component recommends either proceeding to the recurring review process or issuing a TI determination, the responsible DoD component will prepare a formal RE report, publish a notice of availability and a brief description of the RE report in a major local newspaper of general circulation, and announce a 45-day period for submission of written comments to the DoD POC for that military range. If requested, the Department of Defense also will hold a public meeting or availability session. Following the comment period, the Department of Defense will develop written responses to significant comments received during the comment period, consider any issues brought out by these comments, and prepare a formal decision document on which recommendation will be adopted. A copy of the decision document and all supporting information will become part of the administrative record for the range, and a copy of the decision document will be mailed to appropriate government agencies and the current property owner.

6. Site-Specific Response Evaluation

An SSRE examines various response alternatives that address risks posed by the range which have not been or cannot be effectively addressed by ARs. The SSRE process is similar to the feasibility study under CERCLA; however, there is one very important distinction: explosives safety is a frequent overriding concern. If a given response alternative cannot minimize explosives safety risks, then it will be dropped from consideration. EPA stated in the preamble to the final NCP that short-term effectiveness:

> * * * will consider who may be exposed during the remedial action, what risks those populations may face, how those risks can be mitigated, and what risks cannot be readily controlled. Workers are included in the population that may be affected by short-term exposures. (55 FR 8722, March 8, 1990)

Furthermore, the NCP explains that the threshold assessment of overall protection ''draws on the assessments of other evaluation criteria,'' which specifically includes the short-term effectiveness (40 CFR 300.430(d)(iii)(A)). Hence, in the remedy selection process, worker safety is not only considered when determining the short-term effectiveness of a remedy, but is also an integral part of the analysis in determining whether a remedial alternative meets the threshold requirement of overall protectiveness. As EPA stated in response to comments on the proposed NCP:

> EPA agrees that unacceptable short-term impacts can cause an alternative to be considered non-protective of human health and the environment and can remove that alternative from consideration as a viable option. (55 FR 8725, March 8, 1990)

EPA adopted a similar approach, in which one factor carries more weight than others, in developing the evaluation process under the NCP (40 CFR 300). Under the NCP, EPA considers overall protection of human health and the environment and compliance with ARARs as ''threshold criteria'' that each alternative must meet to be eligible for further consideration.

The Department of Defense intends to identify and address ARARs exactly as prescribed under CERCLA and in the NCP. In the event that the Department of Defense wishes to waive an ARAR, it will justify the waiver under the criteria and processes stipulated under CERCLA and in the NCP. The Department of Defense will provide a written description of the ARAR to be waived; the waiver type to be invoked; and the justification for invoking the waiver. The Department of Defense will provide regulators with the opportunity to review and concur on ARAR waivers, as appropriate. The provisions of CERCLA Section 121(f)(2)(B), concerning a State's ability to challenge ARAR waivers, remains unaffected by this range rule.

a. *The Department of Defense screening process:* The NCP allows use of a screening process to reduce the number of alternatives to be considered in detail if a wide array of alternatives initially is developed. The screening process involves three evaluative criteria: (1) Long- and short-term effectiveness; (2) long- and short-term implementability; and (3) long- and short-term cost-effectiveness. Effectiveness of alternatives refers to their overall performance in eliminating, reducing, or controlling current and potential health risks, both during planning and implementation. Short-term effectiveness includes consideration of risks to workers who are involved in conducting the response. EPA guidance allows, at the screening process, elimination of alternatives that are clearly unacceptable in terms of short- and long-term human health risks. EPA guidance further provides that this evaluation is based primarily on many simplifying assumptions and on professional judgment at the screening

stage and is intended to identify alternatives with clearly unacceptable short-term risks. At DoD range sites covered by the proposed rule, the Department of Defense anticipates that the explosive risks posed by military munitions to response personnel will warrant screening out response alternatives that might otherwise be considered at typical CERCLA sites. If a given response alternative cannot provide adequate explosives safety, this will result in its elimination from consideration. If however, none of the on-range response alternatives identified provide for adequate explosives safety for workers involved in the response, the Department of Defense must consider other alternatives that will prevent the situation from worsening, or that will prevent or control releases of UXO or other constituents from the range, or prevent community exposure.

b. *Scope of the site-specific response evaluation:*As with REs, the Department of Defense intends that the SSRE be a highly focused investigation of response alternatives to address a specific risk. Where similar risks were successfully addressed at other ranges, the SSRE should focus on only those alternatives, rather than on conducting research and development of alternative technologies.[10] In recent years, EPA has adopted a similar philosophy and now advocates examination of ''presumptive remedies.'' Presumptive remedies are preferred technologies for common categories of sites, based on historical patterns of remedy selection, and scientific and engineering evaluation of performance. Focusing on developing standardized approaches for addressing the identified risks posed by a military range would allow streamlining of the process, provide consistent resolutions when dealing with recurring problems, and usually result in significant savings.

c. *The site-specific response evaluation plan:* The Department of Defense intends this focusing effort to lead to the development of an SSRE plan. The SSRE plan will be a single, concise document that provides all necessary information about the objectives established for the SSRE, the rationale for those objectives, and how those objectives will be achieved. As necessary, the document will detail sampling and analysis protocols, safety requirements, data analysis procedures, or treatability studies required to complete the SSRE. The SSRE plan will be part of the administrative record, and the Department of Defense will publish a notice of its availability in a local newspaper. The notice will summarize the purpose of the document and inform the public how to gain access to it. The Department of Defense will be issuing detailed guidance on how to conduct an SSRE and how to effectively convey the information in the SSRE plan to the general public.

(1) Conducting the site-specific response evaluation. Once the SSRE plan is complete, the first step in conducting an SSRE is to identify a preliminary list of objectives for the response. These preliminary objectives will depend on the various site-specific factors such as the type of problems to be addressed, environmental setting, and subsequent land use. The second step is to identify general classes of response actions that meet or exceed the preliminary objectives identified for the response. The third step is to determine or estimate the scope of the response using an appropriate unit of measure. This can be, for example, the quantity of military munitions or media present or the size of the range. This determination allows elimination from further consideration of remedial alternatives that are incapable of treating the necessary quantity of military munitions or contaminated material in a reasonable time frame. The fourth step is to identify and screen specific technologies and, within a class of technologies, options for the actual treatment process. The fifth step is detailed evaluation of the effectiveness of the remaining options. The sixth and final step is to identify the alternatives or combinations of alternatives for a more detailed evaluation.

Any alternative that remains under consideration after the final step may require individual treatability studies, if such studies are needed, to provide sufficient data to: fully assess the alternative's suitability; support its design and implementation (if selected); or refine cost estimates and reduce performance uncertainties. Treatability studies are not required for all alternatives; if enough information exists to allow an accurate evaluation of each remedial alternative without conducting treatability studies, the Department of Defense will weigh the cost and time of conducting such a study against the potential benefits.

The detailed analysis of range response alternatives consists of examining each alternative against the following nine criteria, which are used by EPA in evaluating CERCLA remedial alternatives. A comparative analysis of the proposed alternative to each of the other alternatives is then performed. In developing these criteria, the Department of Defense adopted the basic concepts embodied in the nine evaluation criteria used to assess remedial alternatives under the NCP.

(1) Overall protection of human health and the environment (including explosives safety and natural resources).

(2) Compliance with ARARs established under Federal and State law.

(3) Long-term effectiveness and permanence.

(4) Reduction in toxicity, mobility, quantity, or volume.

(5) Short-term effectiveness.

(6) Implementability.

(7) Cost.

(8) Acceptability to appropriate Federal and State officials.

(9) Community (including property owner) acceptance.

Explosives safety and protection of human health, including risks posed to response personnel, are of paramount concern. Under EPA guidance, the detailed evaluation of responses resulting from each alternative must consider short-term risks. EPA considers the short-term risk to response personnel in evaluating whether a proposed remedial alternative meets the threshold criterion of overall protection of human health and the environment. The Department of Defense expects that explosives safety and risk to response personnel will be recurring issues and overriding considerations in the detailed evaluation of alternatives for range responses.

The first criterion addresses the ability of each alternative to protect human health and the environment from the acute, chronic, and carcinogenic effects of exposure to the constituents present at the range. This criterion draws on the constituent risk assessment and the evaluations of other criteria, especially the long- and short-term effectiveness evaluations. The Department of Defense believes that, in evaluating this criterion at military ranges subject to this proposed rule, a balance will need to be struck between protection of human health (including explosives safety) and protection of the environment. For example, while it may be feasible to excavate UXO to a depth of several feet over a large area, doing so will have a negative impact on the local environment. If that area also were critical habitat to a threatened or endangered species, then the benefits of UXO removal would have to be balanced against the disruption of that species' habitat. Furthermore, if a response alternative cannot minimize explosives safety risks, it will be

[10] In August 1996, the Department of Defense established a UXO Technology Executive Committee that will centralize the efforts on research, development, and management of technology for UXO detection, neutralization, and remediation.

dropped from consideration. In assessing this criterion, an explosives safety plan addressing all alternatives will be submitted to the DDESB for evaluation.

Compliance with Federal and State ARARs is identical to the evaluation criteria required under CERCLA and the NCP. This criterion requires evaluation of the ability of each alternative to comply with chemical-specific, action-specific, and location-specific requirements that are either directly applicable to the response action or, in best professional engineering judgment, similar enough to the conditions of the site and response action to warrant their use (termed by EPA as ''relevant and appropriate requirements''). For example, the Department of Defense's on-site response actions must comply with the substantive requirements of RCRA. Under CERCLA, the Department of Defense plans to adopt the process established in the NCP for waiving an applicable requirement. If required, concurrence of that waiver must be sought from the appropriate Federal or State agencies. For the assessment of the effectiveness of an AR, compliance with applicable requirements is required only to the extent practicable given the exigencies of the situation. In this way, this requirement is directly analogous to the requirement for ARAR compliance during a CERCLA removal action.

The long-term effectiveness evaluation assesses the residual risk posed by military munitions or other constituents that will remain at the range following the completion of the response action, and considers the reliability and adequacy of those actions in providing a long-term or permanent solution to the hazard posed at the range. The Department of Defense also believes that this criterion should consider any long-term liabilities associated with the response. For example, in evaluating a response action when wastes will be shipped to an off-site commercial facility for treatment or disposal, the Department of Defense should consider the potential CERCLA liability incurred by that action.

Evaluation of how the response reduces the explosives safety risks, toxicity, mobility, quantity, or volume of the military munitions or constituents (as appropriate) involves assessment of the effectiveness of the alternative at treating the military munitions or other constituents present on the range and the quantity that will remain following the response action.

The short-term effectiveness criterion addresses the risks or impacts of the alternative from the start of the action through to the time when the response objectives are achieved. Under this criterion, each alternative is evaluated to determine the degree of protection afforded to on-site workers and the surrounding community during implementation. Each alternative is also examined for possible adverse environmental impacts arising from implementation of the response or the time required to achieve the response action's objectives.

The implementability criterion assesses both the technical and administrative feasibility of implementing each alternative. Included in this assessment are (1) consideration of the availability of the necessary resources to implement the alternative, (2) an assessment of the reliability of the alternative (also a consideration under the short- and long-term effectiveness criteria), and (3) whether the action will impede other responses at the range. Another aspect of this assessment is the determination of the requirements for interaction with other Federal, State, or local agencies or American Indian tribes. For example, this assessment may require determining the need for obtaining a permit for a given alternative. Another factor the Department of Defense may consider in the assessment under this criterion is the availability of on- and off-range treatment and disposal units for wastes generated by the response action. In the case of chemical munitions, the statutory provisions of 50 U.S.C. 512a regulate the transportation, destruction, and open-air testing of these munitions; thus, the availability of the treatment or disposal capacity at the nearest chemical military munitions stockpile facility may be one of the most important factors limiting response alternatives. The Department of Defense is currently developing mobile treatment systems for these chemical munitions in an effort to preclude any need to transport them off-site.

Cost evaluation requires assessment of the direct and indirect capital costs as well as the operating and maintenance (O&M) costs associated with the alternative. O&M costs are usually a significant portion of the overall costs. The evaluation of this cost should consider any long-term financial liability associated with the response.

Assessment of the last two criteria, acceptability of each alternative to Federal and State agencies and community acceptance, requires consultation with these parties. By this point in the range response process, the public and government agencies should be fully engaged and their concerns already addressed. Some of the ways the DoD organization conducting the response can achieve this goal is through an EPT or RAB (if one exists), and through mechanisms such as public availability sessions.

Once all the alternatives are evaluated against the nine criteria to see if they meet the basic requirements, they are compared to one another to determine the pros and cons of each. For example, one alternative might provide a reduction in risk equal to another for a similar cost, but have a far greater potential for requiring another action sometime in the future. A specific example involves the use of off-site disposal facilities as opposed to an on-site action. In this case, the Department of Defense would need to consider the potential CERCLA liability arising from a release at the off-site facility in making the selection. Another example would be where one alternative provides a slightly higher degree of protection than another, but at vastly greater cost. The balancing of these alternatives will need to evaluate carefully the significance of the difference in protection and the significance of the cost difference. Such a determination in balancing the alternatives should be based on quantitative analysis, but ultimately the decision is largely a matter of professional judgment.

(2) Explosives safety and the nine NCP criteria. Explosives safety issues will be adequately addressed under the current CERCLA process by using the existing nine criteria described in the final NCP. Specifically, worker safety is part of the analysis in evaluating the criterion of short-term effectiveness. EPA states in the preamble to the final NCP that the short-term effectiveness criterion considers: who may be exposed during the remedial action; what risks those populations may face; how those risks can be mitigated; and what risks cannot readily be controlled. Workers are included in the population that may be affected by short-term exposures (55 FR 8723, March 8, 1990).

Section 2.2.9 of EPA's Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, Interim Final, EPA/540/G–89/004 [11] (October 1988) is consistent with the NCP position. This guidance states, ''Protecting the health and safety of the investigative team and the general public is a major concern during remedial response actions. Workers may be exposed to a variety of hazards

[11] Copies of EPA's ''Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, Interim Final, EPA/540/G–89/004'' (October 1988) can be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (telephone 703–487–4650).

including toxic chemicals, biological agents, radioactive materials, heat or other physical stresses, equipment-related accidents, and fires or explosions.''

Furthermore, the NCP explains that the threshold assessment of overall protection ''draws on the assessments of other evaluation criteria,'' which include short-term effectiveness (40 CFR 300.430 (d)(iii)(A)). Hence, in the remedy selection process, worker safety is considered not only when determining the short-term effectiveness of a remedy, but also as an integral part of the threshold requirement of overall protectiveness. As EPA stated in response to comments on the proposed NCP, ''EPA agrees that unacceptable short-term impacts can cause an alternative to be considered non-protective of human health and the environment and can remove that alternative from consideration as a viable option'' (55 FR 8725, March 8, 1990). In summary, information as presented in the NCP, as well as EPA guidance, ensures that risks to workers during investigative and response actions would be adequately addressed within the present CERCLA process.

d. *Site-specific response evaluation report:* As discussed in Section IV.E.5. of this preamble, if the identified risks posed by the military range require an SSRE, an RE letter report may be prepared in lieu of an RE report. The SSRE report will document the findings of both the RE and the SSRE. The SSRE report will provide a complete summary of the information collection and range risk assessment conducted during the RE, as well as the findings and conclusions of the SSRE. Depending on the findings of the RE and SSRE, the SSRE report will make one of the following recommendations:

(1) Identifying the recommended response alternative(s) for implementation, discussing the hazard(s) the response is to address, the results of the evaluation criteria, and the means of assessing the effectiveness of that response after it has been implemented.

(2) Conducting recurring reviews because the quantitative analyses demonstrated that all identified risks are effectively managed and are expected to remain managed in the long term.

(3) Issuing a TI determination because, while an identified risk remains, there are no available alternatives capable of addressing the risk. Typically, recommendations for other appropriate control measures and recurring reviews will be part of a recommendation for a TI determination.

e. *Public and government agency involvement:* The Department of Defense will provide a copy of the draft SSRE report to appropriate Federal and State agencies for review and comment. The Department of Defense also will publish a notice of availability and brief summary of the SSRE report in a major local newspaper of general circulation, and announce a 45-day period for submission of written comments to the DoD POC for that range. If requested, the Department of Defense also will hold a public meeting or availability session. Following the public comment period, the Department of Defense will develop written responses to significant comments received during the comment period and consider any issues brought out by these comments.

If significant changes result from this process, it may be necessary to issue a revised SSRE report and solicit further public comment. This is necessary only if the changes are so dramatic that they could not have been foreseen based on information available before the public comment period. Evaluation of new alternatives because a waiver of an applicable requirement was not granted is one example of when this might occur; however, selection of a new preferred alternative from among those already evaluated would not trigger the need for further comment. Following the comment period and development of written responses to those comments, the Department of Defense will formally document its decision and reasons for choosing the selected response alternative.

The Department of Defense will prepare a formal decision document describing the actions to be taken. A copy of the final SSRE report, the decision document, and all supporting information will become part of the administrative record for the range response at that site. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence.

f. *Documenting the selection of alternatives:* A formal decision document will identify the alternative(s) to be implemented and discuss the goals of the response (e.g., the risk to be addressed) and how the response will achieve those goals. This discussion needs to provide information as to how the alternative(s) provides for explosives safety, protects human health and the environment, addresses the concerns that the public and government agencies expressed in written comments, and eliminates, reduces, or controls the identified risks posed by military munitions or other constituents present at the military range. The decision document also will: (1) Discuss the Federal and State ARARs; (2) identify any ARARs not met; (3) provide justification for a waiver of those requirements; (4) specify the conditions of any waiver; and (5) discuss coordination of the waiver with appropriate Federal or State agencies. Finally, the document will discuss whether military munitions or other constituents will remain at the range. If so, the document also must describe the specific mechanisms used to ensure that land use remains compatible with any remaining military munitions or other constituents, and describe the frequency of recurring reviews. A copy of the decision document and all supporting information becomes a part of the administrative record for the range, and a copy of the decision document will be mailed to appropriate Federal and State agencies, American Indian tribe, and the current property owner.

7. Site-Specific Response Implementation

Under both the CERCLA response and the RCRA corrective action programs, implementation of the selected responses is a separate action from the detailed site assessment, evaluation of remedial alternatives, and process for selecting the remedy. The Department of Defense sees no real need for this demarcation; indeed, the Department of Defense hopes that the preliminary phases of implementing a site-specific response can be occurring simultaneously with the development of the formal decision document. This is not an indication that the Department of Defense will not give the comments received on the SSRE report careful and deliberate consideration, but rather that the Department of Defense hopes to speed the design, construction, operation, and monitoring of the response by capitalizing on existing information, design documents, or plans. This will be especially true if the alternative is either an accelerated response used by the Department of Defense at a military range or a ''presumptive remedy'' used by the Department of Defense, EPA, or another Federal agency at a site undergoing a CERCLA response or RCRA corrective action.

a. *Implementation planning:* Once the site-specific response selection process is complete, the DoD organization conducting the response will plan implementation, operation, and monitoring of the response alternative. This planning process includes several required steps, such as setting design and performance specifications,

preparing complete construction drawings and operating plans, and starting the procurement of any required goods or services. In addition, the Department of Defense is considering including another recommended practice: preparing an implementation strategy document to describe the manner and methods to meet the requirements of applicable Federal, State, and local regulations for performance and construction; reduce environmental and community impacts; address the technical factors related to the design; account for assumptions made in developing the design; and account for possible sources of error in the design process. This document also would outline contingency plans for managing foreseeable deviations.

b. *The response implementation plan:* As with every other phase, the Department of Defense believes that focusing the implementation process is critical to the success of the response. To achieve this, the Department of Defense proposes to develop a single, concise document providing all necessary information about the objectives established for the response, the rationale for those objectives, and how those objectives will be achieved. As necessary, the document also will detail the design, construction, operation, maintenance, monitoring, and decommissioning of the response alternative. An explosives safety plan addressing explosives safety risks will be developed and forwarded to DDESB for approval. This document will be part of the administrative record, and the Department of Defense will publish a notice of its availability in a local newspaper. The notice will summarize the purpose of the document and tell the public where and how to gain access to it.

c. *Implementation of the alternative:* The first step in implementing the response is development of appropriate sets of construction drawings, engineering calculations, process flow diagrams, critical path analyses, and lists and specifications for all equipment and materials. Development of operational guidance for and training of personnel involved in implementing the response should begin as needed. Once these elements are in place, implementing the response is a two-phase process. The first phase involves the actual construction and initial operation of the response, and the second phase involves operation until the response achieves the response objectives. Actual implementation or construction includes conducting necessary quality assurance inspections and preparing any necessary periodic reports on progress in executing the response. Clearly, there must be DDESB review of all phases of the implementation process, including the construction and acceptance testing activities. This function ensures that the construction of the remedy follows the specifications and requirements detailed in the planning process for implementation and the terms of any contracts for operation. The Department of Defense also will monitor the response to determine its effectiveness. Upon completion of each phase of monitoring, the results will be analyzed to determine if the remedy has achieved the response objectives.

d. *Public and government agency involvement:* Any releasable documents or reports developed during this phase of the range response process are part of the administrative record and will be made available for public inspection at the information repository. The public, government agencies, and American Indian tribes may take concerns or questions about the response directly to the DoD POC, the EPT, or the RAB. Federal or State agencies that have granted a waiver from an applicable requirement may request regular updates on the progress of the response and its compliance with any conditions imposed in granting the waiver.

8. Recurring Reviews

In this rule, the Department of Defense is proposing to require recurring reviews of ARs, conditions imposed as part of a TI determination, and site-specific responses. Sites issued a determination of no further action will not be subject to recurring reviews, but if a previously unidentified risk is identified at a later date, the Department of Defense is obligated to take necessary response actions.

The purpose of recurring reviews is to determine if the responses taken continue to ensure explosives safety, protect human health and the environment, prevent off-range releases of other constituents, and provide an opportunity for assessing the applicability of new UXO technology or other new technology that will overcome a previous TI determination.[12] The focus of the review will depend upon the response objectives and the specific responses implemented to address the identified hazards at the range. For example, for responses that provided explosives safety or human health protection through limiting access to the range, the recurring review will focus on the effectiveness of the mechanisms and institutional controls put into place to control access. For ranges where a long-term response is required, the recurring review will focus the ability of the response to achieve its specific performance objectives within a specified time frame.

a. *Frequency of recurring reviews:* Under CERCLA Section 121, EPA conducts reviews of remedial actions at sites on the NPL at least every 5 years, starting with implementation of the remedial action. The Department of Defense is proposing that the first recurring review at closed, transferred, and transferring ranges occur after 3 years. Subsequent recurring reviews would occur at year 7 and at 5-year intervals thereafter, or as necessary to ensure that the response is still effectively addressing the identified risks posed at the range. The Department of Defense proposes this frequency because problems with responses typically manifest themselves in the time shortly after implementation. Recurring reviews will be set on a more frequent schedule (e.g., years 2, 5, 9, 14 * * *) when necessary.

The Department of Defense also proposes that should a problem with a response be identified outside the recurring review process, for example by a private citizen, that party can submit a request to the DoD component responsible for the range to have the response reviewed. Such a request will need to provide sufficient details as to the location of the range, the problem noted, and the identity of the party submitting the request so that it can be handled in a timely manner.

b. *Documenting recurring review findings:* At each recurring review, the Department of Defense will formally document the review procedures and the evaluation criteria used to assess the effectiveness of the response in a recurring review report. The document also will describe any information collected or analysis conducted as part of the review. Finally, the document will provide a discussion of the findings, stating whether or not the response continues to address the hazards at the range and if any new problem is discovered in the period since the last review. If the response failed to remain effective, or if a new problem is discovered, the DoD component responsible for that range will provide a discussion of what actions will be taken to return the response to full effectiveness. If a new problem is identified, the responsible DoD component will document the actions to be taken to address that problem and the schedule for the

[12] The Department of Defense has established a UXO Technology Executive Committee that will centralize the assessment of new UXO technologies.

actions. For the most part, this will involve returning to the appropriate phase of the range response process (e.g., go back to the RA/AR phase and implement an AR). The responsible DoD component then will take action as necessary to address the risks posed by the range.

c. *Public and government agency involvement:* If the review determines that the response remains effective, the Department of Defense will publish a notice to that effect in a major local newspaper of general distribution. The recurring review report will be included in the administrative record and made publicly available at the information repository. If the review finds that the response is not effective, the Department of Defense will publish a notice to that effect and will hold a public meeting or availability session if requested to do so by the public. Furthermore, the Department of Defense will prepare a formal decision document describing any actions to be taken and will send formal written notice to appropriate Federal, State, and American Indian tribal officials that discusses the findings of the review and the Department of Defense's planned actions to address the risks posed by the military range. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence.

9. Ending the Range Response Process

Following completion of an appropriate number of recurring reviews to demonstrate that the range is unlikely to pose an explosives safety risk or a risk to human health or the environment, the Department of Defense will administratively close out and end the range response. Typically, this will require that:

(1) The Department of Defense has demonstrated that any military munitions or other constituents at the range pose minimal hazards.

(2) The specific response objectives are achieved and all related monitoring activities to demonstrate that are complete.

(3) For responses that do not involve restoring groundwater or surface water (for example, in-situ soil treatment), the response is fully operational and performing to design specifications. A response becomes ''fully operational'' either 1 year after construction is complete or when the remedy is determined to be functioning properly and is performing as designed, whichever is earlier.

(4) For response actions involving treatment or other measures to restore groundwater or surface water quality to a level that ensures protection of human health and the environment, the operation of such treatment or other measures for a period of up to 10 years after the response becomes ''fully operational'' will be considered part of the response action, and not O&M.

(5) The only remaining activities at the site involve O&M. O&M measures are initiated after the response action has achieved its goal as outlined in the decision document, and is determined to be ''fully operational'' (except for groundwater or surface water restoration actions as described in IV.E.9.(4)).

Once these requirements are met, the Department of Defense will prepare a range close-out report justifying completion of the response. This report will include:

(1) A summary of the range's history and past and current conditions.

(2) Demonstration that all response objectives have been met.

(3) A determination that sufficient monitoring results have been collected to demonstrate that the response objectives have been achieved.

(4) Demonstration that any long-term maintenance requirements for the response are capable of being successfully carried out.

(5) Documentation that the range response has effectively addressed the hazards posed by military munitions and other constituents at the range.

a. *Public and government agency involvement:* The responsible DoD component will provide a copy of the draft range close-out report to the appropriate State and Federal agencies, American Indian tribe, and Federal land manager for their review and comment. The Department of Defense also will publish a notice of availability and brief summary of the range close-out report in a major local newspaper of general circulation, and announce a 45-day period for submission of written public comments to the DoD POC for that range. If requested, the Department of Defense also will hold a public meeting or availability session. The Department of Defense will prepare a formal decision document describing the actions to be taken, and will provide that document to the appropriate regulators, American Indian tribe, and Federal land manager for concurrence in accordance with § 178.14 of this rule. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence. The final range close-out report, decision document, and supporting information will be placed in the administrative record for the range response.

b. *The Department of Defense's continuing obligation:* Under DERP and 10 U.S.C. 172, the Department of Defense is never fully relieved of its obligation to address environmental damages caused by military munitions or other constituents. If at some future date a problem is discovered at a range where the Department of Defense completed the range response process, the Department of Defense will conduct an appropriate response to address that problem. This response typically will be handled as an explosives or military munitions emergency response; however, if the circumstances indicate a need for a more detailed response, the Department of Defense will reopen the range response process and conduct any appropriate actions. If a response is needed due to the Federal land manager's or property owner's failure to comply with the deed restrictions or other land-use limitations placed on the use of the property, however, the Department of Defense is not responsible for conducting any part of the response that has been made necessary by this failure to comply. After the range rule process has been administratively ended, the Department of Defense is still responsible for continuing any long-term maintenance or monitoring requirements that were part of the Department of Defense response at a given range.

The Department of Defense also has stated that if technology limits the range response and the use of the land is restricted, but later, cost-effective improvements in technology allow for the removal of such a restriction, the Department of Defense is responsible for conducting a later response, if doing so is consistent with the land transfer agreement and reasonably anticipated land uses that were originally identified and there is a current need for the removal of such a restriction. Assessments of the applicability of new technology typically will occur in the recurring review phase, but also may arise after the range response has been administratively ended. Assessment of the applicability of new technology will relate to new UXO technology or other new technology that will overcome a previous TI determination.

F. Other Issues

1. DoD Environmental Response Authorities and Relationship to Other Laws

a. *Regulatory and environmental response authorities:* In this proposed rule, the Department of Defense has

articulated, for the first time in regulatory form, the nature and extent of its environmental response authorities under DERP, DDESB, and CERCLA. It has chosen to do so in the case of response activities at closed, transferred, and transferring ranges because of the unique risks to safety, human health, and the environment posed by such sites, and because of the Department of Defense's expertise in safely managing the risks posed by military munitions and military ranges. DERP, DDESB, and CERCLA give the Department of Defense authority to respond to releases or threatened releases from its facilities (including NPL sites). Like any other executive agency that has been directed to carry out a legislative mandate, the Department of Defense is entitled to create regulations that spell out how this mandate will be effectuated. The Department of Defense has chosen to do this for range responses because of two focused, statutory mandates that direct the Department of Defense's attention to the issue of ordnance and range activities: DERP and 10 U.S.C. 172, which established the DDESB. In this proposed rule, the Department of Defense intends that military munitions and other constituents on closed, transferred, or transferring military ranges are to be addressed under DERP and DDESB authorities in a manner that is not inconsistent with CERCLA. Accordingly, substantive requirements of RCRA may be the source of ARARs to any response actions deemed necessary. This proposed rule's process is one that is tailored to the unique risks posed by military munitions and military ranges (i.e., the risks of UXO and any other constituents that may emanate from UXO, exploded ordnance, or range activities).

When Congress established DERP in 1986, it directed the Secretary of Defense to ''carry out a program of environmental restoration'' at facilities under the jurisdiction of the Secretary of Defense. Section 2701(b)(2) of DERP specifically cites one of the program goals of DERP to be the ''correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.'' Under 10 U.S.C. 172, the Department of Defense has a specific charter to prevent ''hazardous conditions from arising to endanger life and property inside or outside storage reservations'' when it comes to military munitions (including UXO). The DoD agency entrusted with carrying out this mandate is the DDESB. The DDESB is a multi-Service entity that has issued military munitions safety standards and guidance documents such as DoD Directive 6055.9, Ammunition and Explosives Safety Standards,[13] that are followed by all of the armed Services. Case law and the opinion of the U.S. Attorney General support the concept that the DDESB has broad rulemaking powers regarding safety issues over munitions (1949, 41 Op. Atty. Gen. October 27;[14] see also *McQueary* v. *Laird,* 449 F.2d 608 (10th Cir. 1971)[15] and *Pratt* v. *Hercules, Inc.,* 570 F. Supp. 773 (D. Utah 1982)).[16] Thus, DERP and DDESB are the foundation for the Department of Defense's creation of a range-specific response process.

The DERP and DDESB authorities are then combined with the preexisting authority and obligations under CERCLA to engage in environmental response activities. The Department of Defense was already involved in removal and remediation activities at its facilities under the auspices of its Installation Restoration Program (IRP) for many years prior to the creation of CERCLA. The scope of this early IRP was responding to the releases or the substantial threat of releases of hazardous substances into the environment, as well as pollutants and contaminants that present an imminent and substantial danger to public health or welfare. The Department of Defense's IRP continued, with certain modifications, after the enactment of CERCLA in 1980. The Superfund Amendments and Reauthorization Act (SARA) clarified the nature of the Department of Defense's authority to respond to releases from its installations. SARA created CERCLA Section 120, which waived Federal sovereign immunity to the requirements of CERCLA.

CERCLA Section 104 states that the President is authorized by Congress to take removal and remedial actions consistent with the NCP whenever there is a release or a substantial threat of a release of a hazardous substance into the environment or a release or threat of release of a pollutant or contaminant into the environment that may present an imminent and substantial danger to public health or welfare. CERCLA Section 115 states that the President is authorized to delegate any assigned duties or powers and to promulgate any regulations necessary to carry out the requirements of CERCLA.

In E.O. 12580 (59 FR 2923 (January 23, 1987)), the President in Section 2(d) delegated his Section 104 authority (as well as other authorities) to the Secretary of Defense with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody, or control of the Department of Defense. The President's delegation to the Secretary of Defense is not conditioned on the NPL status of the release in question. The Department of Defense must exercise its CERCLA authority in a manner consistent with the requirements of Section 120 of CERCLA.

CERCLA Section 120 requires the Department of Defense to perform restoration activities in a manner consistent with guidelines, rules, regulations, or criteria developed by EPA, such as the NCP. In the NCP, EPA has recognized the various delegations made in E.O. 12580 and the various responsibilities of Federal agencies under CERCLA Section 120 by referring to Federal agencies that are responding to releases from their facilities as CERCLA ''lead agents.'' This ''lead agency'' status applies regardless of whether the release in question is from an NPL or a non-NPL site (i.e., ''the Federal agency maintains its lead agency responsibilities whether the remedy is selected by the Federal agency for non-NPL sites, or by EPA and the Federal agency or by the EPA alone under CERCLA Section 120'' (40 CFR 300.5)).

The Department of Defense has been designated as the lead removal response authority with respect to military munitions in the NCP (40 CFR 300.120(d)). Thus the Department of Defense has lead agency authority under CERCLA (see also 40 CFR 300.5). Currently under the CERCLA program, the Department of Defense has the authority to select the appropriate response at non-NPL sites that are under the jurisdiction, custody, or control of the Department of Defense.[17] At NPL sites, EPA and the Department of Defense jointly choose the appropriate

[13] Copies of DoD Directive 6055.9 may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (telephone 703–487–4650).

[14] Copies of this Attorney General opinion may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[15] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[16] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[17] Note that DoD authorities under DERP also extend to carrying out response actions consistent with DERP and CERCLA at a ''site which was under the jurisdiction of the Secretary'' of Defense.

response. If there is a disagreement, EPA has the final decision. The Department of Defense wants to make it clear that the hallmark of an effective ''lead agency'' is effective involvement by the public, as well as by EPA and State regulators. The Department of Defense believes that the process proposed in this rule allows responses at military ranges to be evaluated in an open fashion, with direct public and regulator involvement. Other Federal agencies have been delegated similar CERCLA authorities in E.O. 12580 in connection with facilities under their jurisdiction, custody, or control.

While this proposal is not inconsistent with the CERCLA process, an interaction and balancing of immediate UXO safety concerns with potential chronic environmental concerns must occur. Unlike other materials, UXO poses an immediate explosives safety risk to human health that must be considered before environmental concerns can be addressed. While explosives safety remains an overriding concern, the Department of Defense recognizes that if CERCLA hazardous substances or RCRA hazardous wastes exist on the range, other regulatory authorities (e.g., State RCRA authorities) may apply. As a practical matter, requirements could be imposed outside of the area suspected of containing UXO to address contamination from these hazardous substances or waste (for example, groundwater collection).

Certain regulators have designated constituents of military munitions as a hazardous waste or hazardous substance under their State CERCLA/RCRA programs. Some States may assert a regulatory cleanup authority, despite the Federal statutory bases for the Department of Defense's response process. Should conflicts develop between the Department of Defense and regulators, it is the Department of Defense's intention to work out compromise solutions that will respect the statutory and regulatory authorities of all parties and yet achieve the necessary expedited and safe response envisioned by this proposed rule, while recognizing that the regulatory agency retains decision-making authority, consistent with CERCLA and RCRA, for human health and the environment.

The Department of Defense's proposed range-specific response process is further supported by the unique threats that military munitions pose to human health and the environment. The Department of Defense's use of military munitions has arisen from its mission of national defense, and the Department of Defense has special expertise in managing explosives safety risks. As described throughout this rule, the risks to safety, human health, and the environment inherent in locating and responding to such relatively unstable materials as UXO are considerable. The location and response activities associated with other constituents are equally dangerous because such activities will typically occur within areas containing UXO. The Department of Defense is the recognized expert in the management of these risks. With its years of experience in safely handling and managing UXO, the Department of Defense has the expertise for determining when immediate safety concerns may prevent certain actions to address potential environmental concerns. Due to the specialized mission of the Department of Defense, the requirement for explosives safety expertise is a critical element unavailable within other organizations. The Department of Defense maintains the nation's institutional military munitions knowledge. EPA has formally recognized the Department of Defense's expertise in explosives safety, and it is appropriate that the Department of Defense regulate the safety implications of UXO on ranges. Typically, Federal, State, and local regulators seek the Department of Defense's expertise when it comes to safely managing military munitions and other ordnance discovered at non-DoD sites. Since it is an expert in military munitions, it is appropriate for the Department of Defense to use its inherent statutory explosives safety and environmental response authorities in DERP, 10 U.S.C. 172, and CERCLA to address the risks posed by military munitions and other constituents at the Department of Defense's closed, transferred, and transferring military ranges.

In summary, the Department of Defense believes there are three reasons that justify establishing a special process for response activities at its closed, transferred, and transferring military ranges: (1) The specific emphasis addressing the imminent and substantial threats posed to human health and the environment by military munitions that is found in DERP and 10 U.S.C. 172; (2) the general delegation of response authority given to the Department of Defense by Congress under DERP and by the President under CERCLA; and (3) the unique nature of the threats posed to human health and the environment by military munitions and military ranges.

b. *Relationship to other laws:* Under this proposal, the Department of Defense will follow the ARAR process in selecting response activities at its closed, transferred, and transferring ranges, and as such, many environmental laws will be considered at this stage. If further action is necessary and can be safely performed, these additional environmental laws will be considered. For example, in the process of removing military munitions, or even installing some protective measures, habitat destruction may occur. If the response action could affect a species listed pursuant to the Endangered Species Act, the Department of Defense must consult with the U.S. Fish and Wildlife Service to ensure that the action is not likely to jeopardize such species or adversely impact its designated critical habitat. In addition, prior to any excavation, the Department of Defense will take appropriate measures to identify resources protected under the National Historic Preservation Act, Archeological Resources Preservation Act, and Native American Graves Protection and Repatriation Act. If any protected resources are likely to be affected, the Department of Defense will comply with the requirements of these acts.

Another example of coordination with other laws involves the Safe Drinking Water Act (SDWA). If contaminants on a military range are affecting the quality of an actual or potential drinking water supply (e.g., a Class I or II groundwater as defined under the SDWA), then, consistent with CERCLA Section 121, this contamination must be addressed. Safety factors under the DERP program would still be considered, and it is possible that safety factors could require alternatives other than source removal, such as collection and treatment of contaminated groundwater outside the range area.

Clean Air Act requirements such as emission limits in a State Implementation Plan (SIP) could be a source of ARARs. In the case of remedial activities that generate air emissions, for example, the response would have to meet the SIP's substantive requirements.

Under RCRA, if military munitions/UXO are excavated from the range and taken off-site, RCRA hazardous waste requirements would apply, as appropriate. As stated in EPA's military munitions rule, ''used or fired munitions are solid wastes when they are removed from their landing spot and then either (1) managed off-range * * * or (2) disposed of (i.e., buried or landfilled) on-range'' (62 FR 6632, February 12, 1997). Also, EPA has made it clear in the preamble to the NCP and various CERCLA guidance documents that aspects of the RCRA corrective action program may also be a source of

ARARs for the Department of Defense's response actions. For example, the flexibility afforded to restoration activities by RCRA's corrective action management unit and temporary unit concepts may be of use in expediting the Department of Defense's restoration activities.

The Department of Defense solicits comments on the interaction of this proposed range rule process with other environmental laws and regulations.

2. Water Ranges

The process of conducting response activities at closed, transferred, and transferring water ranges is particularly daunting. The retrieval, rendering safe, and even the location of military munitions in such ranges are extremely difficult. For example, tidal action may make maneuvering difficult and visibility poor; deep waters require remotely operated equipment; and military munitions often are buried in sediments. Orientation and location are therefore extremely difficult in the ocean environment. Typically, the Navy is limited to diver point searches and sweeps for recovery of military munitions. There is no technology available with the accuracy and discrimination needed to rapidly survey, detect, pinpoint, and classify underwater military munitions.

UXO has a long life in the underwater environment. Projectiles and bombs are designed with thick metal cases that take years to corrode. Nonetheless, experience with aged intact military munitions reveals that fills are typically in deteriorated condition, with formation of metal/explosive compounds and other chemical changes. Because such materials may be more sensitive, most UXO recovered from water ranges is destroyed soon after it is recovered. The toxicity of military munitions ingredients in water ranges generally is low. Most toxic compounds are rapidly decomposed by hydrolysis, photolysis, and oxidation once they are dissolved in water.

Because of the inherent difficulty in locating, rendering safe, and/or retrieving military munitions in water ranges, and because of significant risks to human health and safety posed to Navy personnel by such activities (i.e., the dangers inherent in underwater activities), as well as the water range UXO itself (i.e., its relatively unstable and sensitive nature), the types of ARs and site-specific responses will likely be significantly different than the responses for land-based military ranges. With regard to responses at water ranges, this proposed rule will be implemented in a manner consistent with the rights and obligations of the United States under the Law of the Sea Convention.

3. Other Range Activities

Activities not related to training or researching, developing, or evaluating military munitions may occur or have occurred on closed, transferred, and transferring military ranges. Some examples of these activities are open burning/open detonation (OB/OD) and certain explosive ordnance disposal (EOD) activities.

OB/OD sites are used to thermally treat waste military munitions by a controlled burn or a controlled detonation. Some OB/OD sites were in use for a number of years before RCRA was enacted. Many OB/OD sites were located within military ranges. OB/OD operations may not have completely destroyed the military munitions, resulting in the presence of UXO and its associated explosives safety risks.

OB/OD sites that exist on closed, transferred, and transferring ranges and were never permitted (and did not need to be permitted during their active life) are covered by this rule because they may contain UXO or other constituents. According to current RCRA standards, RCRA-permitted OB/OD facilities (or OB/OD facilities that should have been permitted) need to undergo RCRA closure as directed in their individual treatment facility permit or post-closure care permit, once the decision has been made that the facility will no longer be operated.

In ''Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities' (59 FR 55778, November 8, 1994), EPA recently proposed eliminating the regulatory requirement that it issue permits to all facilities subject to post-closure care requirements in favor of imposing the same substantive requirements at the facility by using ''alternate legal authorities.'' Although EPA's rule has not been finally promulgated, the Department of Defense intends to work with EPA to establish its CERCLA/DERP authorities as an adequate alternate legal authority for purposes of CERCLA/DERP-based response actions (in lieu of RCRA closure activities) at appropriate OB/OD sites located on the Department of Defense's closed, transferred, and transferring ranges.

EOD ranges are not sites that are used for routine OB/OD activities. EOD sites are designated to be used for EOD procedures that are conducted during munitions or explosives emergency responses. Individual and organizational EOD training may also be conducted at these sites. Often, EOD sites are located within military ranges, which provide the explosives safety distances from personnel, buildings, and facilities, as well as controlled access to the ranges. Both of these conditions also are required for EOD sites. EOD sites involved in such activities are within the scope of this proposed rule. EOD activities that are non-emergency and non-training are usually waste treatment and disposal activities and are conducted at permitted facilities; such activities are not covered by this rule.

4. Chemical Agent Constituents

Live chemical agent testing and demilitarization prior to 1969 was performed on certain military ranges. Some of this testing occurred on closed and transferred ranges, and possibly on some transferring military ranges as well. When chemical munitions were employed on a military range, a certain percentage of the fired military munitions did not function and became UXO. Chemical UXO poses a unique and difficult situation for the technical escort unit (TEU), an EOD team specially trained to handle chemical munitions. Although the explosive component of a chemical UXO is much less than that of the conventional high-explosive UXO, TEU personnel must assess the round and handle the UXO wearing personal protective equipment and follow special procedures and techniques unique to the Department of Defense and the Chemical Warfare Material program in case of a chemical release. This greatly slows the assessment and handling process. Increased safety precautions are necessary when there is a potential for the presence of chemical UXO, due to the potentially greater risk to the health and safety of workers and the public should a chemical UXO detonate. In addition, the transport and destruction of lethal chemical agent are regulated by 50 U.S.C. 1512 and 1512a, requiring special approvals by the Secretary of Defense and the Secretary of Health and Human Services prior to either transport or destruction. In addition, notification is required to be given to Congress and affected State governors prior to any such destruction or transportation.

5. Buried Military Munitions

The historical and then-acceptable practice by the Department of Defense was to bury certain military munitions. Many of these past burial sites have been remediated, but a number of them still exist, and some may be located on closed, transferred, or transferring ranges. The Department of Defense

believes that military munitions disposed of by burial or disposal in a landfill are a solid waste, and, if hazardous, would be subject to RCRA Subtitle C regulation when unearthed and further managed; they could also potentially be subject to RCRA corrective action and/or CERCLA. These buried munitions pose the same safety and hazard risks as UXO. In fact, buried munitions can involve greater safety risks than UXO, because the number and types of military munitions may not be known. The presence or suspected presence of buried military munitions will be a significant factor in whether response actions can be performed on the range. Even though they are potentially subject to RCRA, burial sites that are located on closed, transferred, or transferring military ranges should be evaluated in accordance with this rule. The Department of Defense solicits comment on this approach of addressing past burial sites of military munitions on closed, transferred, and transferring ranges.

6. Depleted Uranium

Depleted uranium (DU) is a byproduct of the uranium enrichment processes. DU is used in the commercial sector by the aircraft industry as counterweights, by the power industry as radiation shielding, and by the military as an armor-piercing projectile due to its hardness, strength, and density. DU's potential radiation exposure is small. As an alpha particle emitter, its radiation does not penetrate human skin or even ordinary paper. DU may be present on closed, transferred, and transferring ranges. DU is regulated by the U.S. Nuclear Regulatory Commission.

7. Regulator, American Indian Tribe, and Public Involvement

a. *General:* The Department of Defense will ensure a substantial role for the public, American Indian tribes, and regulators in this rule's process. In addition to the detailed roles outlined in Section IV.E. of this preamble, d etailed discussion of the phases of the range response process, the Department of Defense encourages States to enter into a Defense/State Memorandum of Agreement (DSMOA) to increase State involvement and strengthen the DoD/State partnership. The Department of Defense will make use of established RABs to involve the public throughout the process, or other forums, such as EPTs, as the specifics of the site and interest of the community dictate. While a finalized Defense and Tribal Memorandum of Agreement (DTMOA) does not yet exist, a DTMOA would be treated in a similar fashion.

The Department of Defense intends to seek regulatory agency involvement throughout the range response process. Communication and participation with environmental regulators should be frequent and should go beyond participation in RABs. While RABs are a valuable forum for communication between community, regulator, and the Department of Defense stakeholders, the RAB should not serve as a substitute for regulator involvement. The level of regulator participation should be consistent with the BRAC guidance on regulator involvement. Frequent communications, such as weekly or monthly progress meetings, data exchanges, and early notification of new information, are critical to building a team approach between environmental regulators and the DoD component responsible for the range.

Range responses executed with BRAC and Environmental Restoration Account funds will be eligible to be incorporated into the DSMOA process. The DSMOA process is designed to account for State oversight in the BRAC and Environmental Restoration Account programs, but prohibits incorporation of other projects not funded by these two accounts. To address the revision of the cooperative agreements, the Department of Defense is contemplating a special revision cycle for the States to incorporate new requirements resulting from the DoD range rule.

b. *American Indian tribes:* The U.S. Government has a unique legal relationship with Native American tribes as set forth in the U.S. Constitution, treaties, statutes, and court decisions. In implementing this rule's proposed process, the Department of Defense will act in a manner that is consistent with the ''Government-to-Government Relations With Native American Tribal Governments'' memorandum issued by President Clinton (59 FR 22951, May 4, 1994), the Native American Graves and Repatriation Act (as mentioned in Section IV.F.1.b. of this preamble, Relationship to Other Laws), and any military policies on Native American relations.

Section 178.4(c) provides a definition of American Indian tribe as used in this proposed DoD range rule. To be afforded substantially the same treatment as States under this rule, and thus receive a concurrence role, the governing body of the American Indian tribe must be federally recognized by the Department of Interior; have an appropriate tribal governing body that performs health, safety, or environmental functions; and have real property interests (as defined in § 178.4(l) of this rule) over some or all of a closed, transferred, or transferring range at which a response, including pre-response activities, is ongoing or contemplated.

To ensure meaningful participation by federally recognized tribes and villages that do not meet this rule's definition of an American Indian tribe, the Department of Defense encourages such tribes and villages to participate in RABs and/or EPTs as applicable, and to participate in all public forums provided (such as attending public meetings and technical education programs, and commenting on site-specific documents and notifications produced during the range response process). On a site-specific basis, the Department of Defense intends to notify, coordinate with, and consult with Native American tribes and Native Alaskan villages in accordance with tribal trust obligations and with the presidential memorandum on government-to-government relations. Furthermore, the Department of Defense recognizes that federally recognized tribes and villages have specific rights created under treaties, statutes, and other regulations. For example, the NCP provides that a Native American tribe may bring an action for injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a restriction on alienation (55 FR 8788, March 8, 1990). Nothing in this proposal is intended to preempt or restrict such tribal rights, privileges, or authorities.

This proposal also describes what information and notices are to be provided to appropriate officials of the American Indian tribes (see, for example, § 178.7(e)). Notices to these officials should also include the affected trustee (e.g., the Department of Interior), when applicable. The Department of Defense particularly requests comments on this portion of the proposed rule, especially concerning the relationship between federally recognized tribes and this rule, the level of detail needed on this subject, and the interaction between tribes and States under the range rule.

c. *State involvement in ARARs:* The Department of Defense will provide the States 45 working days to review the draft RA/AR report, the draft RE report if prepared, the draft SSRE report, the draft range close-out report, and the draft recurring review report. A key component of the DoD/State partnership will be the communication of potential Federal and State ARARs and, as appropriate, other pertinent advisories,

criteria, or guidance to be considered (TBCs), prior to the response selection. ARARs and TBCs will be identified early in the alternatives analysis to allow adequate time to identify them and screen the alternatives appropriately. The Department of Defense will request that the States review and concur in the draft decision document for each phase of the range response process. If the responsible DoD component is considering a waiver of State ARARs, it will place the waiver request in the appropriate decision document being submitted for concurrence.

8. Small Arms Ranges

Small arms ranges are a subset/type of military ranges. Military ranges are designed to teach, sustain, and maintain individual and collective group (i.e., unit) skills. Multipurpose ranges support integrated live-fire training of large caliber weapons (such as tanks) with small arms (machine guns). Small arms training is therefore not always confined to a range dedicated solely to a particular type of small caliber weapon. Because small arms ranges, along with large caliber and multipurpose ranges, are commonly configured around a common impact area in a range complex, small arms ranges can be located inside the surface danger zone of other ranges, such as artillery or tank ranges, thus increasing the chance of UXO or other military munitions and debris being present on the range. It is also possible that the area of the small arms range may have been used in the past as a military range that employed large caliber weapons, thus again increasing the chance of UXO or other military munitions and debris being present.

Smaller caliber weapons also are uniquely military in nature due to the types and specifications of ammunition they use; they must meet military specifications and be manufactured to U.S. and North Atlantic Treaty Organization (NATO) standards. The ammunition used is designed for a number of purposes: for use against armored aircraft, light armored vehicles, concrete shelters, and other bullet-resistant targets; incendiary effects against aircraft; signaling; personnel; and light material targets. Due to the type and specifications of the ammunition, small arms ranges are covered by this proposed rule if they are located on a closed, transferred, or transferring military range.

9. Guidance

The Department of Defense will develop implementing guidance on this proposed rule. The guidance will be coordinated with the EPA, States, American Indian tribes, and other Federal agencies before being issued as final. This guidance will address, at a minimum, implementation of the safety risk assessment model or protocol, the decision-making process, and record searches.

10. Dispute Resolution

The Department of Defense has structured this proposed process for range response activities to maximize frequent and meaningful public, American Indian tribe, and regulator involvement. As such, the process should typically resolve issues before they become disputes. The proposed rule contains a formal alternative dispute resolution (ADR) process for Federal and State regulatory agencies, American Indian tribes, and Federal land managers in § 178.15(b).

If, however, a dispute arises that cannot be resolved informally, the Department of Defense encourages any property owner who is not specifically described in § 178.15(b) and who may feel aggrieved by the Department of Defense's response activities to pursue the following ADR[18] mechanism with the Department of Defense to resolve differences: A property owner disputing a response at a closed, transferred, transferring range can submit the dispute in writing to the DoD POC for that range. The Department of Defense will attempt to resolve the dispute within 30 days, or a longer period if mutually agreed upon. Negotiation and other forms of mutually acceptable, nonbinding ADR, which may include non-binding mediation by a qualified third party, may be utilized. If a mutually agreeable resolution is reached, it will be documented in writing. If, after 30 days or a longer agreed-upon period, a mutually acceptable resolution is not reached, the parties may exercise any rights, remedies, or privileges available to them under applicable law. For example, if a hazardous substance is involved, the citizens' suit provision of CERCLA may be applicable. Additionally, procedures under the Military Claims Act (10 U.S.C. 2732 *et seq.*) could be utilized by private property owners of transferred ranges. In addition, the dispute resolution processes spelled out in E.O. 12088 (43 FR 47707, October 13, 1978) and E.O. 12146 (44 FR 42657, July 18, 1979) are available for disputes between Federal agencies and between Federal and State agencies. The Department of Defense solicits input on whether this ADR process for property owners should be a mandatory requirement or if any mechanisms should even be suggested.

A more formalized dispute resolution procedure is included for Federal and State environmental regulatory agencies, American Indian tribes, and Federal land managers in § 178.15(b). The Department of Defense encourages environmental regulators, American Indian tribes, and Federal land managers to utilize this dispute resolution procedure instead of asserting additional statutory authorities over environmental remediation at military ranges, although the use of these procedures does not preclude the use of other statutory authorities. Additionally, site-specific or area-wide agreements may be applicable to a given military range which may provide for alternative dispute resolution procedures. The procedure specifically applies to Federal and/or State environmental regulators, American Indian tribes, and Federal land managers as appropriate.

The formal procedure provides for five levels of dispute resolution: the project manager level, the installation commander level, the military headquarters level, the environmental policy-maker at the Secretariat staff level, and an appropriate political appointee with responsibility for environmental policy within the responsible DoD component. Because the title varies among the military departments, the terms ''headquarters level'' and ''principal environmental policy-maker level'' are used. For example, for the Air Force, the term ''headquarters level'' would refer to the Major Command to which the installation reports, while the term ''principal environmental policy maker'' would refer to the Air Force Deputy Assistant Secretary for Environment, Safety, and Occupational Health. These personnel would meet with a similarly positioned person in the Federal or State agency or American Indian tribe.

An additional level of dispute resolution is available to Federal agencies: elevating the dispute to the Office of Management and Budget (OMB). The dispute resolution process recognizes that regulatory agencies dissatisfied with an outcome under the dispute resolution process may elect to pursue resolution under other applicable laws such as CERCLA or RCRA. Nothing in this rule is intended to preempt State regulatory or enforcement powers or authority concerning hazardous waste or

[18] The Administrative Dispute Resolution Act (5 U.S.C. 571 *et seq.*) and E.O. 12778 (56 FR 12778 (October 23, 1991)) encourage Federal agencies to utilize ADR processes to resolve issues that might otherwise be litigated.

hazardous substances, nor is it intended to affect the waiver of sovereign immunity by the United States contained in the Federal Facility Compliance Act of 1992 or any other environmental law.

In recognition of their unique status, the dispute resolution mechanism provided to American Indian tribes in the DoD range rule is similar to that offered to the States. The final phase of the dispute resolution process provides for resolution between the Secretary of the Military Department, or his/her designee who must be a political appointee whose appointment requires the advice and consent of the Senate, and the American Indian tribal leader or his/her designee. Because the title may vary among the various American Indian tribes, the term ''tribal leader'' has been used to refer to the head of the tribe. Thus the term American Indian tribal leader would refer to the Governor, President, Chief Executive Officer, or other final decision-maker for the American Indian tribe.

In addition to this first option for the final step in dispute resolution for States and American Indian tribes, as presented in § 178.15(b)(5), the Department of Defense is considering a second and third option. The second option is to provide the State governor or the American Indian tribal leader with final decision-making authority for issues under dispute. While the Department of Defense is considering this option, it believes that there are significant legal impediments. In the range rule, the Department of Defense voluntarily acknowledges its obligations, independent of any other authorities that might be available to State regulators or tribes, to address UXO and other constituents from DoD activities on closed, transferred, and transferring ranges. Because the Department of Defense is utilizing statutory authorities for which it has responsibility and no authority to delegate, it believes it should be the final decision-maker under the DoD range rule. Since nothing in the range rule removes or limits any authorities the States and tribes have, the Department of Defense will have a strong incentive to ensure that any actions it takes under the range rule will be fully satisfactory to States and tribes.

The Department of Defense is, however, seriously considering the third option. Under this option, should the Secretary of the responsible DoD component's military department and the State governor or American Indian tribal leader be unable to resolve a dispute by consensus, then the responsible DoD component would prepare a written statement acknowledging the inability of the responsible DoD component and the State or tribe to resolve the dispute and recognizing that the responsible DoD component and the State or tribe may pursue their authorities under any applicable law.

The Department of Defense believes that utilization of the mechanisms in this proposed rule, in lieu of any other authorities that might be applicable, would present substantial advantages for all interested parties because environmental and safety risks will be addressed more promptly and more comprehensively through this rule. As made clear in the dispute resolution provision, if a State or Federal agency or American Indian tribe is dissatisfied with the results of the application of this rule, there is recourse outside the Department of Defense; the State may choose to apply other legal authorities that might be applicable, and the Federal agency may elevate the dispute to OMB or choose to apply other applicable legal authorities.

CERCLA Section 120(e)(4) requires that the selection of a remedial action be made by the head of the relevant department (i.e., the DoD component) and the EPA Administrator, or, if unable to reach agreement on the selection of a remedial action, by the EPA Administrator. Section 178.15(b)(4) thus integrates this statutory authority into this proposed rule to avoid duplicative procedures and unnecessary delays. Section 178.15(b)(4) of this rule recognizes that there may be an overlap between EPA's authority under CERCLA for the final selection of a remedial action at an NPL site and the Department of Defense's authority under 10 U.S.C. 172 and 2701 for explosives safety [19] and military munitions. Thus, consistent with Section 10 of E.O. 12580 on Superfund Implementation, the dispute can be raised to OMB. While such a dispute theoretically is possible, the Department of Defense is confident that the dispute resolution process contained in this rule would result in the selection of a response that is fully satisfactory to the EPA Administrator and to the Secretary of the Military Department prior to the OMB stage.

Range response activities will not be suspended during the dispute resolution process absent extraordinary circumstances. If the secretary of a Federal land manager, or his/her designee whose appointment requires the advice and consent of the Senate, provides a written declaration with supporting rationale to the Department Secretary for the responsible DoD component, stating that an immediate suspension of response activities during the full dispute resolution process is needed to prevent substantial environmental harm that would result from the performance of the activity itself, then the responsible DoD component shall immediately suspend such activity, to the extent consistent with the protection of human health from any imminent and substantial danger. The suspension issue (i.e., whether to suspend response actions during the full dispute resolution process) will be raised directly to the Military Service Department Secretary, or his/her designee whose appointment requires the advice and consent of the Senate, consistent with § 178.15(b)(4). The Secretary of the Federal land manager and the Military Service Department Secretary will have 5 calendar days to arrive at a consensus on the suspension issue. If no consensus is reached, then the Federal land manager will have 5 calendar days to raise the suspension issue to OMB and request OMB to decide whether to continue the suspension of the response action. Five days following the submission of the suspension issue to OMB, the Military Service can resume activity unless OMB makes or has made a determination that the response actions should not resume pending resolution of the underlying dispute, or that an additional time period is needed to consider the merits of the arguments over whether the response action should be allowed to resume.

Because of the extensive involvement of the Federal land manager throughout the range rule process, this mechanism should be rarely used, and will typically be based on concerns over endangered species or other issues involving statutory protections. This process is intended as a true emergency measure to assure the Federal land manager that it will be able to protect its lands from substantial environmental damage while the merits of the dispute are fully aired. Because the suspension of an action could result in substantial contract costs to the government and delays in the mitigation of risks to human health and the environment from UXO, the Federal land manager should endeavor to raise its concerns over substantial environmental effects of a proposed

[19] The Department of Defense notes that, under isolated circumstances, other constituents subject to CERCLA could be present in concentrations that constitute an explosives safety hazard. In such case, the Secretary of the Military Department would resolve the explosives safety issues, and the EPA Administrator would resolve the other issues related to the release of those other constituents.

response action at the earliest possible time.

One Federal commentor has suggested that the time limits of this provision be changed from 5 days to 10 days. Additionally, a State commentor has asked if States can suspend response actions during a dispute. The Department of Defense seeks comments on both of these issues.

11. Allocation of Operation and Maintenance Costs Between Federal Agencies

The Department of Defense intends to enter into a memorandum of understanding (MOU) with Federal land managers to establish the general principle that the Department of Defense is responsible for the incremental O&M costs attributable to military munitions (including UXO and its associated constituents) employed by the Department of Defense at ranges that are under the responsibility of another Federal land manager and for which the Department of Defense would be responsible under the proposed rule for the costs of the response, unless otherwise specified by law. Such an MOU would be modified only by mutual agreement of the parties. This MOU would establish a workgroup to review quality controls and the consistency of decisions whether to commence the RA/AR process at former ranges managed by a Federal land manager. The MOU would incorporate the dispute resolution process for allegations that the Department of Defense arbitrarily applied the factors in § 178.6(b) or relied upon inaccurate information.

The Department of Defense and the Federal land manager also would enter into site-specific MOUs to establish the costs for which the Department of Defense would be responsible at that range. The costs and the requirements would be established for a range as part of the response selection process called for under the rule, including the selection of an AR.

12. Future Land Use Issues for Transfers Between Federal Agencies

The Department of Defense and the Federal land managers have agreed to enter into a memorandum of agreement (MOA) to discuss future land use issues. Section 178.16 of this proposed rule generally discusses future land use issues at these Federal properties. The Department of Defense has divided this issue into three topics: Transferring ranges, transferred ranges, and responsibility for additional response actions. For transferring ranges, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses that are identified and agreed to between the parties to the land transfer prior to the transfer. Where the transfer of the military range is mandated by statute, executive order, a previously concluded agreement between the Department of Defense and the Federal land manager, or under terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager, under which the Department of Defense used the property, and where future land uses are not identified or response activities are not specified in such statute, order, agreement, or instrument, any dispute will be resolved through utilization of the dispute resolution procedure identified in the range rule. Where the transfer is not legally mandated, disagreement over what the reasonably anticipated future land uses are may result in the transfer of the property to some other party, or no transfer. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

For transferred ranges, in the absence of a prior agreement identifying reasonably anticipated future land uses or imposing land use restrictions, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses at the time of the range response. Reasonably anticipated future land uses will be decided by the Federal land manager with the concurrence of the Department of Defense. If there is disagreement, the dispute resolution procedure identified in the range rule will be utilized. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

Section 178.16 also lists a number of specific circumstances where the Department of Defense will conduct and fund additional response actions at these Federal properties (for example, when the remedy fails or additional UXO is found that creates conditions inconsistent with the established reasonably anticipated land use, the Department of Defense will conduct and fund additional response actions at these Federal properties to achieve consistency with the established reasonably anticipated land use). The Department of Defense seeks comments on the applicability of these future land use concepts to parties other than Federal land managers.

The MOA will also discuss responsibilities for additional response actions should a response previously implemented under the range rule later conflict with a Federal land manager's trust obligations or statutory management responsibilities. Where the Federal land manager makes a determination that the level of response previously implemented pursuant to the range rule is inconsistent with the Federal land manager's trust obligations or statutory responsibilities for management and stewardship of the land and natural resources for the United States and the public, the Federal land manager shall identify to the Department of Defense what further response action is necessary to meet those obligations or responsibilities and shall identify how the OMB decisional factors described in this paragraph are implicated by the proposed additional response action. If the Department of Defense elects not to fund or perform the additional response action so identified, the Federal land manager may invoke the dispute resolution procedure in the range rule. If such a dispute arises, EPA shall be provided notice and an opportunity to participate in discussions with OMB. When OMB resolves a dispute as to whether the Department of Defense or the Federal land manager should fund or perform additional response action identified by a Federal land manager pursuant to this section, OMB shall consider and balance:

(1) The importance of the proposed additional response action in meeting the Federal land manager's obligations or responsibilities.

(2) Any reasonable alternatives by which the Federal land manager could satisfy its obligations and responsibilities, including alternatives that utilize innovative technology or that require no additional response action.

(3) The cost and cost-effectiveness of the proposed additional response action in comparison to the other reasonable alternatives.

(4) The cost of the cleanup to the Federal government as a whole.

(5) The availability or expected availability of appropriated funds at each of the respective agencies to fund or perform the proposed additional response action.

The Department of Defense and the Federal land managers have agreed to include the language of the MOA concerning future land use in the site-

specific agreements under which land is to be transferred from the Department of Defense to a Federal land manager. The Department of Defense seeks comments on the applicability of these future land use concepts to parties other than Federal land managers.

V. Discussion of Other Major Alternatives

A. General

In proposing this rule, the Department of Defense is considering several alternatives to address military munitions on closed, transferred, or transferring ranges. In assessing each of these alternatives, the Department of Defense has sought to identify the relative merits of each statutorily based process in meeting the goals of establishing a single, logical, and comprehensive process that addresses explosives safety, human health, and environmental concerns. In the Department of Defense's view, a single, specific process is necessary to avoid confusion and to ensure that effective response activities are undertaken in a fiscally responsible manner. That process must recognize and consider the unique explosives safety hazards associated with military munitions, and concomitantly with any response activity conducted on closed, transferred, or transferring ranges. The process must ensure that the public and regulators are fully informed and engaged at every stage of the process, including substantial and meaningful public and regulator participation in the response selection and implementation. The process must be accessible, consistent, and lead to informed decision-making. As noted elsewhere in this rulemaking, the Department of Defense's response activities, both on- and off-range, have been variously subject to rules implemented under DERP, CERCLA, RCRA, or a combination. With respect to military munitions, DDESB exercises independent statutory authority over explosives safety. As such, the Department of Defense has identified and continues to consider several alternatives based on each of these statutory authorities.

B. Comprehensive Environmental Response, Compensation, and Liability Act

The Department of Defense also is considering the adequacy of CERCLA to address military munitions on closed, transferred, or transferring ranges. As specified in CERCLA Section 104, CERCLA is triggered by the ''release or substantial threat of a release into the environment'' of a ''hazardous substance'' or of a ''pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.'' Neither military munitions nor UXO are, as a class, designated as CERCLA hazardous substances. However, the Department of Defense is considering whether UXO should, as a class, be recognized for purposes of this rule as CERCLA pollutants or contaminants. A CERCLA pollutant or contaminant triggers a CERCLA response if an imminent and substantial endangerment to the public health or welfare exists.

The procedural and technical standards for conducting CERCLA response activities are codified at 40 CFR 300, National Oil and Hazardous Substances Pollution Contingency Plan (55 FR 8666, March 8, 1990). The NCP establishes five steps to respond to releases or potential releases of hazardous substances: (1) Identifying releases; (2) conducting a removal action if warranted; (3) conducting a site assessment, and, if warranted, listing the site on the NPL; (4) performing a remedial investigation/feasibility study (RI/FS); and (5) implementing the remedy through remedial design/remedial action (RD/RA).

The first step, release identification, occurs through various means, including: reports of releases; investigations by Federal, State, or local government agencies; land inventories or surveys; or incidental discoveries. All sites where a release is identified should be reported to the National Response Center and/or EPA, and all Federal sites should be listed on the Federal agency hazardous waste compliance docket.

The second step in the CERCLA response process is conducting a removal action, as appropriate. This is not to say that removal actions cannot be undertaken at other points in the process; they can be conducted at any time during a CERCLA response. Removals, as described in 40 CFR 300.415, are actions taken to mitigate immediate threats to human health and the environment. There are three types of removals: (1) Emergency removals where action is required within hours or days; (2) time-critical removals where up to 6 months can elapse before action is necessary; and (3) non-time-critical removals, where more than 6 months can elapse before action is taken. A non-time-critical removal requires the development of an engineering evaluation/cost analysis, as well as more significant public outreach than is required for an emergency or time-critical removal. Removal actions are undertaken at the discretion of the lead agency, and should, to the maximum extent practicable, contribute to the overall remediation of the site. The decision to move from a removal action to a remedial action is also at the discretion of the lead agency (40 CFR 300.415(f)). All removal actions require the development of an action memorandum that describes the action taken and the rationale for that action.

Site assessment, the third step in the CERCLA process, has several stages and is outlined in the NCP at 40 CFR 300.420. First, the lead agency conducts a preliminary assessment (PA), which is a ''desktop'' review of available information about the site and involves the collection of demographic information and information about the environmental setting of the site. Sites not posing a sufficient threat to human health or the environment to warrant a CERCLA response are screened out. The second stage, site inspection (SI), may be required to further evaluate site conditions. The SI is a more detailed investigation of site conditions, usually involving sampling of environmental media. Information from the PA and SI is the basis for the third stage, scoring the site using the hazard ranking system (HRS). The HRS is a model for assessing the site's relative threat to human health and the environment. If a site scores at or above 28.5, it may be placed on the NPL, and an RI/FS will be required.

The fourth phase of the CERCLA remedial process is the RI/FS (40 CFR 300.430). The RI/FS characterizes the site and evaluates various alternatives for remediation of the site. Unlike the SI, the RI involves the collection of sufficiently detailed information to fully characterize site conditions, determine the nature and extent of the contamination, evaluate risks posed by the site, and assess the performance of options for remediation. The FS involves development, screening, and detailed evaluation of each remedial option. Each alternative is evaluated against the following nine criteria:

(1) Overall protection of human health and the environment (including explosives safety and natural resources).

(2) Compliance with ARARs.

(3) Long-term effectiveness and permanence of the remedy.

(4) Reduction of the toxicity, mobility, quantity, or volume of the contaminants present at the site.

(5) Short-term effectiveness of the remedy.

(6) Implementability of the remedy.

(7) Cost of the remedy.

(8) Federal and State acceptance of the selected alternative.

(9) Community (including current property owner) acceptance of the selected alternative.

The RI/FS phase leads to the selection of the remedial option, the development of a proposed plan, and the signing of a record of decision (ROD). Once the ROD is signed, the RI/FS phase is complete.

The fifth step of the CERCLA process, outlined under 40 CFR 300.435, is the RD/RA, where the selected remedy is actually implemented. The RD involves all aspects of designing the remedial action, including development of technical drawings, specifications, operational guidance, and training. The RA involves the actual construction, operation, and monitoring of the remedial action selected to clean up the contamination at the site. Depending upon site conditions, an RA may continue for many years. Upon completion of the RA and demonstration that the site has been remediated to the required levels, the site is deleted from the NPL.

The Department of Defense recognizes the fact that the NCP and E.O. 12580, which implement CERCLA, identify the Department of Defense as the lead agency with respect to releases from its facilities, including those involving military munitions. Thus, while the CERCLA process provides a potentially viable alternative to the proposed rule, the Department of Defense has identified some initial concerns. For example, confusion exists as to the extent of EPA's response authority and the application of State ARARs. While E.O. 12580 delegates to the Department of Defense the authority to conduct these response activities, the Department of Defense is not often directly involved in the national priority listing of these response activities.

The Department of Defense recognizes that CERCLA is a possible and existing alternative to the range rule. The Department of Defense has closely modeled the range rule on the CERCLA process and utilizes CERCLA and DERP, an amendment to CERCLA, as authorities for promulgation of the range rule. However, the range rule has advantages over CERCLA. The range rule focuses exclusively on range issues, unlike CERCLA, and will provide for a consistent response by the Military Services. The range rule is not limited to those materials addressed under CERCLA. Additionally, the range rule will require the Department of Defense to respond to former ranges without a State forcing action under CERCLA or other State authorities.

C. Defense Environmental Restoration Program

DERP was established in 1986 by Section 211 of SARA. DERP is codified at 10 U.S.C. 2701, *et seq.* and establishes the Department of Defense's responsibility and authority to address UXO (which is a subset of military munitions), as well as hazardous substances, pollutants, and contaminants on DoD property. Likewise, DERP establishes funding authority for these response activities. For example, in 1996, Congress appropriated more than $1.4 billion for the Department of Defense's response activities. DERP, therefore, ensures that the obligation to undertake response activities is directly linked with the Department of Defense's authority to undertake these response activities and its authority to fund them. This approach under DERP is not inconsistent with existing statutory, regulatory, and policy pronouncements in CERCLA, the NCP, and E.O. 12580.

The NCP and E.O. 12580 identify the Department of Defense as the lead agency under CERCLA for releases or threatened releases of hazardous substances, pollutants, and contaminants from the Department of Defense's facilities. Consistent with this designation, the Department of Defense has conducted removal or remedial responses at its NPL and non-NPL sites in accordance with the processes set forth in CERCLA and the NCP.

Less clear, however, is the role of explosives safety under DERP. The Department of Defense believes that explosives safety is inextricably linked to any response activity that is undertaken on a military range. Thus, consistent with its statutory mandate under 10 U.S.C. 172, the Department of Defense is proposing to incorporate into this process the additional consideration of explosives safety when addressing military munitions and other constituents on closed, transferred, or transferring ranges. In doing so, the Department of Defense believes that response activities on military ranges will be expedited and will more fully address human health and environmental issues in the practical context of explosives safety.

D. Resource Conservation and Recovery Act

In its proposed military munitions rule (60 FR 56476, November 8, 1995), EPA proposed 40 CFR 261.2(g)(4)(i), which would have identified military munitions on closed and transferred ranges as a statutory solid waste. EPA proposed allowing the Department of Defense's range rule to supersede this provision as long as the range rule was protective of human health and the environment and allowed for public involvement in addressing the cleanup of closed and transferred ranges. In its final military munitions rule (62 FR 6622, February 12, 1997), however, EPA decided to postpone action on this section of the proposed munitions rule to conduct further analyses of comments and to evaluate the Department of Defense's range rule. In the final military munitions rule, EPA indicated that it is prepared to address this issue under Federal environmental laws if the Department of Defense does not promulgate the range rule or if EPA finds that the range rule does not adequately protect human health and the environment.

While the Department of Defense recognizes the RCRA corrective action process as an available alternative to the proposed rule, the Department of Defense has identified several initial concerns that may weigh against use of this alternative. First, the question of whether military munitions that have been used for their intended purpose and that remain on a closed, transferred, or transferring military range are a solid waste has generated much discussion. See *Barcelo* v. *Brown,* 478 F Supp. 646, 668–669 (D. Puerto Rico 1979)[20] and *Connecticut Coastal Fishermen's Assoc.* v. *Remington Arms Co.,* 989 F.2d 1305 (2d. Cir. 1993).[21] Also, the use of munitions has not been characterized as disposal because the ordinary use of munitions includes placement on the land.

In the proposed Military Munitions Rule, EPA concluded that ''the legal arguments supporting the characterization of munitions on closed or transferred ranges as ''solid waste,'' and the legal arguments opposing such a characterization are finely balanced, with the result that EPA has the discretion to select either interpretation pursuant to [RCRA] Section 3004(y).'' EPA did not repeat or reject this discussion in the Final Rule.

Second, the applicability of RCRA's remedial authorities (i.e., Sections 3004 (u) and (v) or Section 3008(h)) requires that a range be collocated at a RCRA-permitted or interim status facility. Some closed, transferred, or transferring ranges may not be located at RCRA-

[20] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[21] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaitherburg, MD 20878–1399 (telephone 301–258–8753).

permitted facilities or facilities with interim status, thereby falling outside the scope of RCRA's authorities. The Range Rule would, in contrast, apply to all closed, transferred, or transferring ranges, and would impose a uniform set of requirements and procedures regardless of whether or not the range is at a site subject to RCRA.

Last, as with CERCLA, the Department of Defense is concerned that the RCRA corrective action process, as outlined in the 1990 proposed rule concerning solid waste, does not address explosives safety issues. As noted elsewhere in this proposed rule, explosives safety risks must be minimized during all phases of a response activity involving military munitions.

E. DoD Explosives Safety Standards Promulgated Pursuant to 10 U.S.C. 172

Pursuant to 10 U.S.C. 172, Congress established the DDESB, an independent entity whose charter involves determining appropriate safety standards for dealing with military munitions. While the Department of Defense believes that such standards are of paramount importance in any activity involving military munitions, it recognizes that in the environmental context, other factors must be considered.

The DDESB process for addressing military munitions is set forth in Chapter 12 of DoD 6055.9-STD.[22] Specifically, the process requires that a site-specific evaluation of the explosives safety hazards and an explosives safety plan be developed and submitted to DDESB prior to the undertaking of any response action. In the event that a site-specific evaluation is impracticable, the DDESB process provides for the use of default criteria in addressing the explosive hazards present or suspected. In both instances, the response undertaken is not inconsistent with the anticipated use of the property. Absent from this evaluation and determination is a consideration of the chronic effects of other constituents on the environment.

Application of DDESB standards in response activities would differ from the proposed rule, as the DDESB standards focus primarily on concern for explosives safety. The proposed rule accounts for explosives safety concerns, while also addressing the effects of other constituents on human health and the environment.

[22] See footnote 13 in Section IV.F.1.a. for information on obtaining DoD issuances.

F. Status Quo

As noted in the foregoing discussion of alternatives, the current applicability of all of the foregoing laws and regulations and the lack of any clear direction to the Department of Defense on the appropriate process for addressing military munitions responses is confusing, inefficient, costly, and time-consuming, and may be ineffective. This confusion contributes to public and regulator concern that military munitions are not being addressed adequately. The Department of Defense is committed to sound environmental stewardship in all of its activities. This commitment includes addressing the safety, human health, and environmental effects of military munitions on closed, transferred, and transferring ranges.

In recent years, Congress and the public have demanded that the Department of Defense make available for public use lands that are no longer needed to perform the military's mission. In light of the Department of Defense's downsizing efforts, the BRAC process, and increasing fiscal constraints, more land is being identified for transfer. These transfers are subject to a plethora of environmental laws and regulations, which often involve different, and sometimes inconsistent, processes and decision-makers. To date, the public and regulators have relied on RCRA and CERCLA as the primary environmental laws governing DoD response activities. Additionally, the Department of Defense's response to military munitions is subject to DERP and DDESB criteria. The Department of Defense views this confusion as an impediment to effective, timely, and fiscally responsible responses to military munitions on closed, transferred, and transferring ranges. This rulemaking will identify a single, specific process by which the Department of Defense will execute its responsibilities, while providing for meaningful public and regulator participation throughout all phases of the process.

VI. Administrative Requirements

A. Regulatory Impact Analysis

Under E.O. 12866 (59 FR 51735 (October 4, 1993)), the Department of Defense must determine whether this regulatory action is ''significant'' and therefore subject to review by OMB and to the requirements of this E.O., which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The E.O. defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

The Department of Defense recognizes that E.O. 12866 contains an exemption for ''military functions''; however, the Department of Defense has decided to prepare a cost/benefit analysis due to the novel legal and policy issues raised by this proposal. The Department of Defense estimates that this proposed rule would result in national incremental costs of $709,000,000, or $47 to $71 million per year over a 10- to 15-year period. This represents a savings from costs that would be anticipated under a RCRA program of $12,984,000,000, or $865 to $1,300 million per year over a 10- to 15-year period. For more information on the cost impacts of this proposed rule and of some alternative approaches, see the *Department of Defense (DoD) Final Report: Range Rule Regulatory Impact Analysis*, July 3, 1996, in the range rule docket.

1. Cost Analysis

Implementing this proposed rule equates to national incremental costs of $709,000,000. These costs are less than those of other alternatives; for example, a RCRA program that is anticipated to cost $12,984,000,000.

2. Benefits Analysis

Benefits include increased protection of the public, increased protection of UXO response workers, a consistent process, increased public involvement in responses, a substantial role for regulatory agencies and for American Indian tribes, and a substantial role for Federal land managers. Implementing a comprehensive approach to respond to closed, transferred, and transferring ranges while ensuring public safety, worker safety, and protection of human health and the environment is essential and would be a beneficial outcome of this proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the Regulatory Flexibility Act requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Regulatory Flexibility Act are only those ''business, organizations and governmental jurisdictions subject to regulation.''

The Department of Defense has determined that this proposal will primarily affect the Department and that few, if any, small entities will be affected.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501, authorizes the Director of OMB to review certain information collection requests by Federal agencies. The recordkeeping and reporting requirements of this proposed rule do not constitute a ''collection of information'' as defined in 44 U.S.C. 3502(3) of the Paperwork Reduction Act of 1995.

D. Environmental Justice

On February 11, 1994, President Clinton issued E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This E.O. requires Federal agencies to identify and address disproportionately high and adverse human health and environmental effects of Federal programs, policies, and activities on minority and low-income populations.

This rulemaking effort will incorporate environmental justice concerns in promoting partnerships with all the public and government agencies and will carefully consider where and how any public availability sessions will be offered. The Department of Defense is soliciting comment and input from all public entities and government agencies, including members of the environmental justice community and members of the regulated community.

This proposed rule is intended to reduce risks from military munitions. The rule involves not one site, but will affect property nationwide. Because of the locations of some of this property, in the implementation of the rule the potential exists for impacts to minority or low-income communities. The rule itself, however, is not expected to cause any disproportionate impacts to minority or low-income communities versus affluent or nonminority communities.

E. Unfunded Mandates

Title II of the Unfunded Mandates Report Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department of Defense generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

The Department of Defense has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this proposed rule is not subject to the requirements of Section 202 of the UMRA.

VII. References/Docket

The regulatory docket for this proposed rule contains a number of background materials. To obtain a list of these background materials, contact the toll-free DoD range rule information request line at (888) 541–1081 (voice), (800) 870–6547 (fax), or (800) 870–6557 for the hearing-impaired.

Accordingly, 32 CFR part 178 is proposed to be added to read as follows:

PART 178—CLOSED, TRANSFERRED, AND TRANSFERRING RANGES CONTAINING MILITARY MUNITIONS

Sec.

178.1 Purpose and objectives.
178.2 Scope.
178.3 Applicability.
178.4 Definitions.
178.5 Responsibilities.
178.6 Identification of closed, transferred, and transferring ranges.
178.7 Range assessment/accelerated response.
178.8 Range evaluation.
178.9 Site-specific response evaluation.
178.10 Site-specific response implementation.
178.11 Recurring reviews.
178.12 Ending the range response process.
178.13 Information repository and the administrative record.
178.14 Participation of and concurrence role for Federal and State regulatory agencies, American Indian tribes, and Federal land managers.
178.15 Dispute resolution.
178.16 Future land use for transfers within the Federal government.

Authority: 10 U.S.C. 2701 *et seq.*; 10 U.S.C. 172; 42 U.S.C. 9601, *et seq.*; and E.O. 12580, 3 CFR, 1987 Comp., p. 193.

§ 178.1 Purpose and objectives.

(a) This part establishes the procedures for evaluating and responding to explosives safety, human health, and environmental risks on closed, transferred, and transferring military ranges and for providing opportunities for full and active participation by Federal, State, and local agencies; American Indian tribes; and the public in the evaluation and responses conducted at those military ranges.

(b) This part implements the authorities and responsibilities of the Department of Defense (DoD) under 10 U.S.C. 2701 *et seq.*, the Defense Environmental Restoration Program; 10 U.S.C. 172, Ammunition Storage Board; 42 U.S.C. 9601 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; and Executive Order 12580, Superfund Implementation, 59 FR 2923 (January 23, 1987), 3 CFR, 1987 Comp., p. 193, as amended. When appropriate, it may also be used in conjunction with other authorities governing effects to land or water.

§ 178.2 Scope.

(a) This part applies to closed, transferred, and transferring military ranges located in the United States, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, and which are or were owned by, leased to, or otherwise possessed or used by the United States where military munitions have been used in training or research, development, testing, and evaluation (RDT&E) by the Department of Defense or an agent of the Department of Defense in furtherance of the national defense or security.

(b) This part does not apply to:

(1) Active and inactive ranges.

(2) Any closed, transferred, or transferring range that, upon [the effective date of the final rule], was identified and included in an interagency agreement for a National Priorities List (NPL) site, or which is subject to response activities pursuant to any specific statutory authority or pursuant to any agreement that addresses military ranges that has taken

effect prior to [the effective date of the final rule]. Should, however, any aspects of this part be useful in making a given response more efficient, effective, or protective, then nothing in this part shall prohibit their application upon mutual consent of the parties. In cases where unexploded ordnance (UXO) investigations or response actions are underway on closed, transferred, or transferring ranges at the time of [the effective date of the final rule], this part, this part will not apply unless mutually agreed to by the parties to the interagency or Federal facility agreement.

(3) Airspace designated as a military operation area or military training route (MTR), or their underlying water or land areas where military munitions have not been used.

(4) Properties that are historic battlefields.

(5) Sites where military munitions or explosives are destroyed as part of a munitions or explosives emergency response as defined under 40 CFR 260.10 and subject to the provisions of 40 CFR 261 through 272 (inclusive).

(6) Ranges located outside the United States, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

§ 178.3 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, the DoD Field Activities, and the National Guard Bureau (NGB) (hereafter referred to collectively as ''DoD components''). For purposes of this part, the Department of War and the Department of the Navy as they existed prior to the creation of the Department of Defense are also considered DoD components.

§ 178.4 Definitions.

When used in this part, the following terms have the meanings given as shown:

(a) *Accelerated responses (ARs).* Any readily available, generally used, reliable, and easily implemented methods of addressing the risk posed by military munitions, unexploded ordnance, or other constituents at military ranges. ARs may be fully protective in and of themselves.

(b) *Active range.* A military range that is currently in service and is being regularly used for range activities.

(c) *American Indian tribe.* For purposes of this part, the term American Indian tribe means Native American tribes and Native Alaskan villages that:

(1) Are federally recognized as an Indian tribe or a Native Alaskan village by the Secretary of the Department of Interior, in accordance with 26 CFR 83.5;

(2) Have a tribal governing body that is currently performing governmental functions to promote the health, safety, and welfare of the affected population or to protect the environment within a defined geographical area, and;

(3) Are the property owner, as defined in paragraph (l) of this section, of any portion of a closed, transferred, or transferring range at which a response is ongoing or contemplated.

(d) *Closed range.* A military range that has been taken out of service as a range and that either has been put to new uses that are incompatible with range activities or is not considered by the military to be a potential range area. A closed range is still under the control of a DoD component.

(e) *Federal land manager.* Federal agencies having or clearly anticipated to receive jurisdiction, custody, or control over the property.

(f) *Inactive range.* A military range that is not currently being used, but that is still under military control and is considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

(g) *Military munitions.* All ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes and incendiaries used by DoD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program, after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

(h) *Military range.* A designated land or water area set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. The definition of a military range does not include airspace, or water, or land areas underlying airspace used for training, testing, or research and development where military munitions have not been used.

(i) *Operation and maintenance (O&M).* O&M means measures that are required to maintain the effectiveness of response actions. O&M measures are initiated after the response action has achieved the goal in the decision document and is determined to be ''fully operational.''

(j) *Other constituents.* Other constituents are potentially hazardous chemicals that are located on or originate from closed, transferred, or transferring ranges and are released from military munitions or UXO, or resulted from other activities on military ranges. Other Constituents may be subject to other statutory authorities, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, *et seq.*) and the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*).

(k) *Project team.* The responsible DoD component, its designated representatives, any Federal land manager with jurisdiction, custody, or control for all or part of the range, and its designated representatives. The designated representatives provide the working-level direction for scoping the response action, preparing planning documents, conducting investigations and studies, and preparing reports.

(l) *Property owner.* A non-Federal entity that owns a piece of property, or a Native American tribe or Native Alaskan village that owns a piece of property or land, held in trust by the United States for that tribe or village or its individual tribal or village members, that is a closed, transferred, or transferring military range.

(m) *Transferred range.* A military range that is no longer under military

control and has been leased, transferred, or returned to another entity, including Federal entities. This includes a military range that is no longer under military control but was used under the terms of a withdrawal, executive order, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager.

(n) *Transferring range.* A military range that is proposed to be leased, transferred, or returned from the Department of Defense to another entity, including Federal entities. This includes a military range that is used under the terms of a withdrawal, executive order, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager. An active range will not be considered a ''transferring range'' until the transfer is imminent.

(o) *Unexploded ordnance.* Military munitions that have been primed, fuzed, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

§ 178.5 Responsibilities.

(a) The DoD component responsible for the military munitions or other constituents present at a closed, transferred, or transferring military range, or another DoD component designated by the Secretary of Defense shall exercise the responsibilities set forth in this part. This entity shall be referred to in this part as the ''responsible DoD component'' or the ''DoD component responsible for'' a range.

(b) In the case of closed, transferred, or transferring ranges that are owned, leased, or otherwise possessed by a State National Guard and are covered by this part, the NGB shall be the responsible DoD component.

(c) If the closed, transferred, or transferring military range includes property under the jurisdiction, custody, or control of a Federal land manager, the responsible DoD component must establish a project team that will include the Federal land manager. The project team will exercise the responsibilities of the responsible DoD component in the working-level development and management of the range response process at that range. Where a Federal agency has been proposed to receive jurisdiction, custody, or control of a former range but the agency is not yet a Federal land manager as defined in this part, the agency may sit on the project team for informational purposes only.

(d) The Department of Defense recognizes that other Federal agencies listed in 40 CFR 300.175 have duties established by statute, executive order, or presidential directive that may apply to or be impacted by response actions conducted under the regulations set forth in this part. These agencies may be called upon by the responsible DoD component or other Federal agency during response planning and implementation to provide assistance in their respective areas of authority or expertise, as described in 40 CFR 300.175, consistent with the agencies' capabilities and authorities.

§ 178.6 Identification of closed, transferred, and transferring ranges.

(a) Within 18 months of [the effective date of the final rule], each DoD component shall develop a list of all known closed, transferred, and transferring ranges subject to this part and controlled at any time by that DoD component, and shall submit that list to a DoD component designated by the Secretary of Defense for use in developing the central inventory database.

(1) The information for each military range in the inventory database shall include, at a minimum:

(i) A unique identifier for the range.

(ii) The current status of the range (i.e., closed, transferred, transferring).

(iii) The name, address, and telephone number of a point of contact at the responsible DoD component.

(iv) An appropriate record showing the location, boundaries, and areal extent of the range including all counties, independent cities and towns in which the range is located, as well as all states in which that range is located.

(v) Known entities, other than a DoD component, with current ownership interest or control of the land or its resources.

(vi) Any deed restrictions currently in place that might affect the potential for exposure to military munitions, UXO, or other constituents present at the range.

(2) The inventory database shall be updated on a periodic basis (at least annually) to reflect new information that has become available.

(b) Each military range included in the inventory database will be assigned a relative priority for range assessment/accelerated response (RA/AR) activities based on the overall conditions at the range. When assigned, this priority will be included in the record for each military range in the inventory database. The Department of Defense will consider factors relating to safety and environmental hazard potential, such as:

(1) Whether access to a site can be controlled, and the population is potentially at risk.

(2) The potential for direct human contact and evidence of people entering into the range area.

(3) Whether a response action has been or is being taken at that range under the Formerly Used Defense Sites (FUDS) program or other environmental restoration programs.

(4) Planned or mandated dates for transfer of the range from DoD control.

(5) Documented incidents involving UXO or off-range releases of other constituents from the range.

(6) The potential for drinking water contamination.

(7) The potential for destruction of sensitive ecosystems.

(8) The potential for damages to natural resources.

(9) The potential for releases to the air.

(10) The degree of public interest in the range.

(11) The degree of Federal land manager interest in the range.

(12) The degree of State or Federal regulator or American Indian tribal interest in the range.

(c) This paragraph describes Federal, State, and local government; American Indian tribe; and public involvement with the inventory database.

(1) Upon the designation of the responsible DoD component, that DoD component shall work with the community to provide information concerning conditions at the range, response activities, and shall respond to inquiries. The responsible DoD component shall notify, at a minimum, immediately affected individuals; State, local, and tribal officials; and, when appropriate, civil defense or emergency management agencies.

(2) Federal, State, and local officials; members of Native American tribes and Native Alaskan villages; and the public possessing detailed information on areas believed to be military ranges are encouraged to submit that information in writing to the Office of the Deputy Under Secretary of Defense (Environmental Security, 3000 Defense Pentagon, Washington, DC 20301–3000). If, based on the Department of Defense's evaluation of that information, the area is identified as a military range subject to this part, it will be included in the inventory database.

§ 178.7 Range assessment/accelerated response.

(a) *Purpose.* The purpose of the RA/AR is to promptly identify and respond

to risks posed by military munitions, UXO, and other constituents at military ranges subject to this part and to distinguish between military ranges posing little or no explosives safety, human health, or environmental risk and military ranges that pose a greater risk. The RA/AR shall use readily available information or limited data collection efforts to determine if additional investigation is required, or if implementation of an AR is warranted.

(b) *Range assessment.* As used in this part, the range assessment:

(1) Is a limited-scope investigation designed to assess the risk posed by any military munitions, UXO, or other constituents found at the range.

(2) Shall, to the extent feasible, rely on available information gathered through a combination of file searches and desktop information collection and analysis. If warranted, additional data may be collected by such methods as visual inspection of the range or focused sampling of environmental media in an effort to develop an improved understanding of the conditions at the range. Such on-range activities require development of a work plan describing the objectives and plan for conducting any such activities.

(i) Prior to any activities that require entry onto the range, an explosives safety plan must be approved by the DoD Explosives Safety Board (DDESB) or other explosives safety organization designated by DDESB. The work plan implemented by the responsible DoD component must provide for an appropriate balance between the risks to the safety of the investigators and the risk to the community and environment. The draft work plan will be coordinated with and comment sought from the appropriate Federal, State, and local governments and American Indian tribe. The final work plan will be subject to regulatory concurrence.

(ii) Proposed decisions that recommend limiting the entry into specific areas of the range based on munitions safety hazards will be provided to stakeholders, together with a description of the criteria and rationale used to develop such recommendations. In response to such a proposed decision, the responsible DoD component must:

(A) Seek reversal or modifications of the proposed decision, or

(B) Develop an alternative explosives safety plan that meets the conditions of the proposed or modified decision.

(iii) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(3) Shall initiate range delineation procedures that will adequately define discrete areas within a range that pose varying explosives safety hazards and environmental risks.

(4) Should include collection of the following information:

(i) Information about the types, quantities, constituents, and other factors related to the military munitions employed on the range.

(ii) Information on previous range clearance operations or reported incidents involving military munitions or UXO on the range.

(iii) Safety issues related to use of military munitions on the range.

(iv) The identity, concentration, and human health or environmental effects of other constituents known or believed to be present on the range.

(v) The type(s) of any targets that may have been used on the range.

(vi) Other past and present uses of the range.

(vii) Any prior agreements identifying reasonably anticipated future land uses or imposing land use restrictions, and, in the absence of these, current and reasonably anticipated future land uses.

(viii) The environmental setting of the range, including:

(A) The location and identity of receptors (e.g., human, threatened and endangered species) potentially impacted by the range.

(B) Specific exposure routes of concern.

(C) Local hydrologic and hydrogeologic conditions (which include groundwater).

(D) Soils and geology.

(E) Terrain.

(F) Climate.

(G) Biological resources.

(H) Cultural resources.

(c) *Accelerated response.* (1) Examples of ARs include, but are not limited to:

(i) Conducting source removals or surface sweeps for UXO.

(ii) Posting signs warning of the dangers associated with the range.

(iii) Erecting fences or other similar physical means to control access.

(iv) Implementing erosion controls (e.g., silt fences).

(v) Suspending incompatible land uses (where DoD has the ability to do so).

(vi) Implementing community education and awareness programs.

(vii) Implementing a monitoring program.

(viii) Other appropriate engineering, institutional, or exposure controls.

(2) *Selection of an AR.* AR alternatives shall be evaluated using qualitative (or if available, quantitative) information to assess how the AR would address the following nine criteria, which shall have the same meanings as set forth in the National Contingency Plan (NCP):

(i) Overall protection of human health and the environment (including explosives safety and natural resources).

(A) All AR alternatives must minimize explosives safety risks.

(B) If the AR requires entry onto the range, an explosives safety plan must be approved by DDESB or other explosives safety organization designated by DDESB.

(ii) Compliance with applicable or relevant and appropriate requirements (ARARs) established under Federal and State law, to the extent practicable given the exigencies of the situation.

(iii) Long-term effectiveness and permanence.

(iv) Reduction in the toxicity, mobility, quantity, or volume of other constituents present at the range.

(v) Short-term effectiveness.

(vi) Implementability.

(vii) Cost.

(viii) Acceptability to Federal and State regulatory agencies, or agencies with jurisdiction over affected resources.

(ix) Community (including current property owner) acceptance.

(d) *Evaluation of RA/AR process results.* (1) The RA/AR process continues until:

(i) Enough information has been gathered to make an informed risk management decision, or it is determined that the effort necessary to collect that information is beyond the scope of the RA.

(ii) Identified risks have been addressed through implementation of an AR, or it is determined that ARs are unable to address the identified risk.

(2) An RA/AR report shall be prepared to document the findings of all assessment activities and the reasons for and effectiveness of each AR implemented.

(3) The RA/AR report shall make a recommendation as to appropriate action, including one or a combination of the following recommendations:

(i) Issue a determination of no further action (residual munitions risk is below the threshold of concern and no continued protective measures or institutional controls are needed).

(ii) Conduct recurring reviews of the ARs implemented.

(iii) Conduct a range evaluation (RE).

(iv) Issue a technical impracticability (TI) determination.

(v) Other recommendations, as appropriate.

(e) *Public and government agency involvement.* This section describes

Federal, State, and local government, American Indian tribal, and public involvement with the RA/AR process.

(1) Before beginning the RA/AR, the responsible DoD component shall send a written notice to the appropriate Federal, State, and local governments and American Indian tribe, informing them that these activities will be starting. This notice will also request that these governments designate a point of contact within their organization and identify that point of contact to the responsible project team. The responsible DoD component shall also send a copy of this notice to the current property owner.

(2) All validated information about conditions at the military range, the documented risks posed by the site, and any ARs to address those risks shall be included in the administrative record and be made available to Federal, State, and local governments; American Indian tribes; and the public through the information repository.

(3) For all ARs where implementation of an on-site action is expected to take more than one hundred twenty (120) days to complete, within that period the responsible DoD component shall conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when they would like to be involved in the range response process. The responsible DoD component shall also prepare a formal public involvement plan (PIP) based on the community interviews or other relevant information, specifying the public involvement activities that are needed during the response.

(4) The RA report shall be subject to a forty-five (45)-day review and comment period prior to implementation of the AR. However, if the physical construction associated with an interim AR, including implementation of site access control measures, is reasonably expected to be completed within 120 days of the commencement of the AR (i.e., completion of the RA), the opportunity for review and comment may be provided during or when the AR has been implemented.

(5) As part of involving Federal, State, and local governments; American Indian tribes; and the public in the range response, the responsible DoD component shall make use of existing Restoration Advisory Boards (RABs) to involve these parties throughout the process, or other forums, such as an Extended Project Team (EPT), as the specifics of the site or interest of the community indicate.

(6) Range responses conducted under this part shall include a technology education program which provides an opportunity for members of the public, American Indian tribes, and regulators to receive a general explanation of available UXO detection and remediation technologies, their capabilities, and their limitations. This program will be provided by the responsible DoD component beginning in the RA/AR phase. The program shall consist of a presentation to the RAB or EPT which generally explains the UXO detection and removal technologies available to respond to former military ranges. Additional presentations may be made as a follow-up to the initial presentation if significant technology advancements have been made.

(7) Except as provided in paragraph (e)(4) of this section, once the RA/AR report is complete, the responsible DoD component shall:

(i) Send a copy of the draft RA/AR report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a notice of availability and brief description of the RA/AR report in a major local newspaper of general circulation announcing a forty-five (45)-day period for submission of written comments.

(iii) Hold a public meeting or availability session, if requested.

(iv) Develop written responses to significant comments received during the comment period and prepare a final RA/AR report.

(8) Except as provided in paragraph (e)(4) of this section, the responsible DoD component shall then prepare a formal decision document specifying the action(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the decision document will be sent to the appropriate Federal, State, and local governments; American Indian tribe; and current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.8 Range evaluation.

(a) *Purpose.* The purpose of the RE is to conduct a detailed investigation designed to fully characterize the risks posed by any military munitions, UXO, or other constituents known or believed to be present at the military range. The purpose of this investigation is to determine if the AR measures are adequate or whether a site-specific response is necessary. The RE will typically require the collection and analysis of quantitative information not otherwise available, in addition to the data assembled for the RA/AR.

(b) *The RE plan.* An RE plan shall be prepared providing information as to the objectives established for the RE, the rationale for those objectives, and how those objectives will be achieved. As necessary, the RE plan shall include any sampling and analysis protocols, explosives safety requirements, data analysis procedures, or studies required to complete the RE.

(1) Prior to any activities that require entry onto the range, a site safety plan must be approved by the DDESB or other explosives safety organization designated by DDESB.

(2) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(c) Information collected during the RE should include:

(1) Information about the types, quantities, constituents, and other factors related to the military munitions employed on the range.

(2) Information on previous range clearance operations or reported incidents involving military munitions or UXO on the range.

(3) Safety issues related to use of military munitions on the range.

(4) The identity, concentration, and human health or environmental effects of other constituents known or believed to be present on the range.

(5) Any prior agreements identifying reasonably anticipated future land uses or imposing land use restrictions, and, in the absence of these, current and reasonably anticipated future land uses.

(6) The environmental setting of the range, including:

(i) The location and identity of receptors (e.g., human, threatened and endangered species) potentially impacted by the range.

(ii) Specific exposure routes of concern.

(iii) Local hydrologic and hydrogeologic conditions (including groundwater).

(iv) Soils and geology.

(v) Terrain.

(vi) Climate.

(vii) Biological resources.

(viii) Cultural resources.

(d) *Range risk assessment.* (1) Information obtained from the RE will be used to conduct a detailed, quantitative assessment of the risks posed by any military munitions, UXO, or other constituents identified at the

military range to provide an estimate of the overall risk posed by the range, and to serve as a tool for assessing the effectiveness of a given response at addressing those risks. The range risk assessment will evaluate explosives safety, human health, and environmental risks.

(2) The range risk assessment shall consider:

(i) Identification of the source of the risk (e.g., identification of the specific munitions or constituents).

(ii) The likelihood of exposure.

(iii) The effects of exposure.

(e) *RE report.* (1) The findings and conclusions of the RE will be presented in a formal RE report. The RE report shall make a recommendation as to appropriate action, including one or a combination of the following recommendations:

(i) The AR was adequate to address the identified risks.

(ii) Conduct recurring reviews.

(iii) Issue a TI determination.

(iv) Conduct a site-specific response.

(v) Issue a determination of no further action.

(vi) Other recommendations, as appropriate.

(2) If the recommendation is to initiate a site-specific response, a letter report may be used to summarize the findings of the RE, identify the risks requiring a site-specific response, and the anticipated scope and start of the site-specific response evaluation (SSRE). No formal RE report would be prepared, and instead the SSRE report would incorporate the findings and conclusions of the RE.

(f) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribe; and public involvement with the RE process.

(1) Before beginning the RE, the responsible DoD component shall send a written notice to the appropriate Federal, State, and local governments and American Indian tribe informing them that these activities will be starting. This notice will also request that these governments designate a point of contact within their organization and identify that point of contact to the responsible DoD component. The responsible DoD component shall also send a copy of this written notice to the current property owner.

(2) The RE plan, all validated information about conditions at the military range, and any documented risks posed by the site shall be included in the administrative record and be made available to Federal, State, and local governments; American Indian tribes; and the public through the information repository.

(3) As appropriate, the responsible DoD component shall hold a public availability session to provide information on the status of the RE when appropriate.

(4) If a letter report in accordance with paragraph (e)(2) of this section is prepared, then the responsible DoD component shall:

(i) Prepare a formal decision document that summarizes findings of the RE, identifies the risks requiring a site-specific response, and describes the anticipated scope and start date of the SSRE.

(ii) Make the decision document available to the public.

(iii) Send a copy of the decision document to the appropriate Federal, State, and local governments and American Indian tribe. A copy shall also be sent to the current property owner.

(iv) Seek concurrence on the decision document in accordance with § 178.14(e).

(5) If a formal RE report is prepared, then, upon completion of the draft RE report, the responsible DoD component shall:

(i) Send a copy of the draft RE report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a Notice of Availability and a brief description of the RE report in a major local newspaper of general circulation and announce a forty-five (45)-day period for submission of written comments.

(iii) Hold a public meeting or availability session, if requested.

(iv) Develop written responses to significant comments received during the comment period and prepare a final RE report.

(6) After an RE report is finalized, the responsible DoD component shall prepare a formal decision document recommending the action(s) to be taken.

(i) This decision document and all its supporting information are part of the administrative record.

(ii) Copies of the decision document and final report will be sent to the appropriate Federal, State, and local governments; American Indian tribe; and current property owners.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.9 Site-specific response evaluation.

(a) *Purpose.* An SSRE examines response alternatives that address the remaining risks identified by the RE that have not been, or cannot be, effectively addressed by ARs. SSREs are highly focused investigations of response alternatives that address risks based upon reasonably anticipated future land use.

(b) *SSRE plan.* An SSRE plan that provides the following information shall be prepared: the objectives established for the SSRE, the rationale for those objectives, and how those objectives will be achieved. As necessary, the SSRE plan shall include any sampling and analysis protocols, explosives safety requirements, data analysis procedures, or studies required to complete the SSRE.

(1) Prior to any activities that require entry onto the range, an explosives safety plan must be approved by the DDESB or other explosives safety organization designated by DDESB.

(2) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(c) *Development of site-specific response alternatives.* Site-specific response alternatives shall be initially developed and screened in the following manner:

(1) Identify a preliminary list of objectives for the response.

(2) Identify general categories of response actions that will meet or exceed the preliminary objectives.

(3) Determine the scope of the response.

(4) Identify and screen specific technologies and, within a class of technologies, identify options for the actual treatment process.

(5) Identify the alternatives or combinations of alternatives for a more detailed evaluation.

(6) Conduct bench or pilot-scale studies as necessary.

(d) *Analysis of site-specific response alternatives.* The following evaluation criteria shall be interpreted and have the same meanings as set forth in the NCP and shall be interpreted in the same manner as in the preamble to the NCP and any relevant policy or guidance issued by EPA. The response alternatives developed in paragraph (c) of this section shall be further analyzed with respect to the following nine evaluation criteria:

(1) Protection of human health and the environment (including explosives safety and natural resources).

(2) Compliance with Federal and State ARARs, or appropriate use of waivers from those requirements.

(3) Long-term effectiveness. Assess the residual risk posed by military munitions (including UXO) or other constituents that will remain at the range following the completion of the

response action, and consider the reliability and adequacy of the action in providing a long-term or permanent solution to the hazards posed at the range. The long-term effectiveness evaluation shall also include an assessment of any potential long-term liabilities associated with the response action.

(4) Reduction in toxicity, mobility, quantity, or volume of other constituents present at the range.

(5) Short-term effectiveness. Address the risks or impacts of the alternative from the start of the action through to the time when the response objectives are achieved.

(6) Implementability. Assess both the technical and administrative feasibility of implementing each alternative. Included in this assessment are:

(i) Consideration of the availability of the necessary resources to implement the alternative.

(ii) Assessment of the reliability of the alternative.

(iii) Assessment of whether the action will impede other responses at the range.

(iv) Requirements for interaction with other Federal, State, or local governments or American Indian tribes.

(v) Availability of on- and off-range treatment and disposal capacity.

(7) Cost. Assess direct and indirect capital costs; operating and maintenance costs; and long-term liability costs associated with the alternative.

(8) Acceptability of each alternative to Federal and State regulatory agencies or agencies with jurisdiction over affected resources.

(9) Community acceptance (community and/or property owner acceptance).

(e) *Site-specific response evaluation report.* (1) The findings and conclusions of the SSRE shall be presented in an SSRE report. If only a letter report is prepared for an RE, the findings and conclusions of the RE shall be documented in the SSRE report. The SSRE report shall make a recommendation of appropriate action, including one or a combination of the following recommendations:

(i) Implement the recommended response alternative(s).

(ii) Conduct recurring reviews.

(iii) Issue a TI determination.

(2) [Reserved]

(f) The SSRE report shall document the selection of alternative(s) by:

(1) Identifying the alternative(s) to be implemented.

(2) Discussing the goals of the response (e.g., the risk to be addressed).

(3) Explaining how the response is expected to achieve the goals.

(4) Providing information as to how the alternative(s):

(i) Provides for explosives safety.

(ii) Protects human health and the environment.

(iii) Addresses the concerns of the public and government agencies that were received in the written comments.

(iv) Eliminates, reduces, or controls the risks posed by military munitions, UXO, or other constituents present at the range.

(v) Meets ARARs, or identifies those requirements that will not be met, and provides the justification for the waivers, and any conditions imposed.

(vi) Discusses whether military munitions, UXO, or other constituents will remain at the range following the completion of the response, and if so, describes the specific mechanisms used to ensure that land use remains compatible with any residual hazard, and designates the frequency of recurring reviews.

(g) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the RE/SSRE process.

(1) The RE and SSRE Plans, all validated information about conditions at the military range, any documented risks posed by the site, and any validated information generated during the SSRE shall be included in the administrative record and be made available to the appropriate Federal, State, and local governments; American Indian tribe; and the public through the information repository.

(2) As appropriate, the responsible DoD component will hold public availability sessions to provide information on the status of the RE and SSRE.

(3) Once the draft SSRE report is complete, the responsible DoD component shall:

(i) Send a copy of the draft SSRE report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a notice of availability and brief description of the SSRE report in a major local newspaper of general circulation announcing a forty-five (45)-day period for submission of written comments.

(iii) If requested, hold a public meeting or availability session.

(iv) Develop written responses to significant comments received during the comment period and prepare a final SSRE report.

(4) The responsible DoD component shall then prepare a formal decision document specifying the action(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the final SSRE report and decision document will be provided to the appropriate Federal, State, and local governments and American Indian tribe. In the case of a military range on privately owned lands, a copy of these documents shall also be sent to the current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.10 Site-specific response implementation.

(a) *Implementation plan.* A response implementation plan shall be prepared describing the objectives established for the response, the rationale for those objectives, and how those objectives will be achieved. As necessary, the document shall also detail the design, construction, operation, maintenance, monitoring, and decommissioning of the response alternative, and any operational guidance and training of personnel involved in implementing the response.

(1) Prior to any activities that require entry onto a range, an explosives safety plan must be approved by the DDESB.

(2) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(b) *Response implementation.* Implementation of the response requires the following:

(1) Actual construction and initial operation of the response, including conducting necessary quality assurance inspections and preparing any necessary periodic reports on progress in executing the response.

(2) Once the response is fully operational, monitoring the response to determine its effectiveness.

(3) Operation until all response objectives are achieved.

(c) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the process of implementing the site-specific response.

(1) All validated information about conditions at the military range, the documented risks posed by the site, and the site-specific response to address those risks shall be included in the administrative record and be made available to Federal, State, and local governments; American Indian tribes; and the public through the information repository.

(2) As appropriate, the responsible DoD component will hold public availability sessions to provide information on the status of the response.

(3) If requested, the responsible DoD component shall provide periodic updates on the status of the response to the appropriate Federal, State, and local governments and American Indian tribe.

(4) A periodic update on the status of the response shall be sent to the current property owner.

§ 178.11 Recurring reviews.

(a) *Purpose.* The purpose of recurring reviews is to determine if the responses taken continue to minimize explosives safety risks and protect human health and the environment, and to provide an opportunity for assessing new technology. The scope of the review will depend upon the response objectives and the specific responses implemented. The review will evaluate the changes in physical conditions at the range, changes in public accessibility, applicability of new UXO technology or other new technology that will overcome a previous TI determination, and continued effectiveness of the response.

(b) *Conduct of recurring reviews.* Recurring reviews shall be conducted for ARs, any conditions imposed as part of a TI determination, and site-specific responses. Sites with a determination of no further action are not subject to recurring reviews.

(c) *Frequency of recurring reviews.* (1) Recurring Reviews shall be conducted starting in the third year following the completion of the response.

(2) Subsequent reviews may, as needed, be repeated in the seventh year and at five-year intervals thereafter, for as long as needed.

(3) The review cycle may be set on a different or more frequent schedule (e.g., years 2, 5, 9, 14), as necessary.

(d) *Documenting recurring review findings.* (1) At each recurring review, the review procedures and the evaluation criteria used to assess the effectiveness of the response will be documented in a recurring review report.

(2) The recurring review report will provide a discussion of the findings, stating whether or not the response continues to effectively address the risk at the range, and if any new problems have been discovered in the period since the last review, such as changes in public accessibility (due, for example, to changes in adjacent land uses).

(3) If the response failed to remain effective, or a new problem is discovered, then the responsible DoD component will document the action(s) which will be taken to address that problem and the schedule for the action. If the response was inadequate, then the response process starts again at the RA/AR phase.

(e) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the recurring review process.

(1) The responsible DoD component shall:

(i) Send a copy of the draft recurring review report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a notice of whether the response remains effective or not in a major local newspaper of general circulation.

(iii) Hold a public availability session or meeting, if requested.

(2) The responsible DoD component shall then prepare a formal decision document specifying the actions(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the decision document will be provided to the appropriate Federal, State, and local governments and American Indian tribe. In the case of a military range on privately owned land, a copy of this document shall also be sent to the current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.12 Ending the range response process.

(a) Following completion of an appropriate number of recurring reviews to demonstrate that the range poses no significant risk to public health or the environment, and commensurate with the originally agreed upon use of the property, the responsible DoD component may administratively close out and end the range response process subject to the following requirements:

(1) Demonstration that any military munitions (including UXO) or other constituents at the military range pose minimal risks.

(2) The specific response objectives have been achieved and all related monitoring activities demonstrate that achievement.

(3) The response is fully operational and performing to design specifications.

(4) The only remaining activities at the site involve operations and maintenance.

(b) *Range close-out report.* A range close-out report shall be prepared supporting completion of the response. This report will include:

(1) A summary of the range's history and past and current conditions.

(2) Demonstration that all response objectives have been met.

(3) A determination that sufficient monitoring results have been collected to demonstrate that the response objectives have been achieved.

(4) Demonstration that any long-term maintenance requirements for the response are capable of being successfully carried out.

(5) Documentation that the range response has effectively addressed the risks posed by military munitions, UXO, or other constituents at the range. Approval must be obtained from DDESB.

(c) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the process of ending the range response.

(1) Once the draft range close-out report is complete, the responsible DoD component shall:

(i) Send a copy of the draft range close-out report to the appropriate Federal and state regulators and American Indian Tribe, seeking their review and comment.

(ii) Publish a notice of intent to end response activities in a major local newspaper of general circulation announcing a forty-five (45)-day period for submission of written comments.

(iii) Hold a public meeting or availability session, if requested.

(iv) Develop written responses to significant comments received during the comment period and prepare a final range close-out report.

(2) The responsible DoD component shall then prepare a formal decision document specifying the action(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the decision document and final report will be sent to the appropriate Federal, State, and local governments; American Indian tribe; and the current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

(d) *The Department of Defense's continuing obligation.* If at some future date a problem is discovered at a military range that has been administratively closed out, the Department of Defense will conduct an

appropriate response to address the problem. This response typically will be handled as an explosives or munitions emergency response; however, if the circumstances indicate a need for a more detailed response, the Department of Defense will reopen the range response process and conduct any appropriate actions.

§ 178.13 Information repository and the administrative record.

(a) *Purpose.* The Department of Defense seeks to ensure full and active participation by any public or private entity interested in the range response process. Accomplishing this requires making information about the response activities taken at each military range available to the public. This section establishes the minimum requirements for making this information available.

(b) *Information repository.* The responsible DoD component shall establish an information repository.

(1) This information repository will be located where it is easily accessible to the local population, such as the community library. The information repository will be established when the RA/AR is initiated.

(2) Upon completion of each relevant study document, report, or decision document, the responsible DoD component will place a copy of that document in the information repository.

(c) *Administrative record.* The responsible DoD component shall establish an administrative record that contains the documents that form the basis for the selection of response actions.

(1) The administrative record shall be maintained at a location near the site being addressed, as established by the responsible DoD component.

(2) A copy of the administrative record shall be made publicly available at the information repository.

(3) Documents to be placed in the administrative record include, but are not limited to, the following:

(i) Notice that the RA/AR is being initiated.

(ii) The RA/AR report.

(iii) The RE plan.

(iv) All explosives safety plans.

(v) The RE report.

(vi) The SSRE plan.

(vii) The site-specific evaluation report.

(viii) The site-specific response implementation plan.

(ix) Recurring review reports.

(x) The range close-out report.

(xi) All decision documents.

(xii) All public comments.

§ 178.14 Participation of and concurrence role for Federal and State regulatory agencies, American Indian tribes, and Federal land managers.

(a) *General.* This part provides the appropriate Federal and State environmental remediation regulatory agencies and American Indian tribes with the opportunity to concur and participate in the development of the various decision documents under this part. This part also provides Federal land managers having jurisdiction, custody, or control over property on which a range response will occur the opportunity to concur and otherwise participate. The provisions of this section are in addition to the provisions elsewhere in this part which provide for participation of Federal, state, and local governments; American Indian tribes; the public; and current property owners.

(b) *A Federal land manager for a transferred or transferring range* will be given the opportunity to participate on the range response project team during all phases of the range response as an equal member of the team, with access to project documents and information. The Federal land manager will be provided a concurrence role during the evaluation and response at the range, including at the RA/AR, RE/SSRE, recurring review, and administrative close-out phases. In the absence of concurrence on significant issues or a document, a Federal land manager member of the project team may invoke the formal dispute resolution mechanism provided in § 178.15(b).

(c) *Review.* As required under this part, the responsible DoD component will seek review and comments from the appropriate Federal, State, and local governments; American Indian tribe; Federal land manager; the public; and other parties on the following: the RA/AR report under § 178.7; the RE report under § 178.8, if prepared; the SSRE report under § 178.9; the recurring review report under § 178.11; and the range close-out report under § 178.12. The parties identified in paragraph (e) of this section shall have forty-five (45) days for review of these documents. The responsible DoD component will then respond to significant comments, after which the responsible DoD component will issue a draft decision document for concurrence from the parties identified in paragraph (e).

(d) *Decision documents.* For purposes of this paragraph, ''decision documents'' shall mean the following: the decision document prepared under § 178.7(e)(8) for the RA/AR phase; the decision document prepared under § 178.8(f)(4) or (6) for the RE; the decision document prepared under § 178.9(g)(4) for the SSRE; the decision document prepared under § 178.11(e)(2) for the recurring review phase; the decision document prepared under § 178.12(c)(2) for the administrative close-out phase; and any final work plan for on-range activities under § 178.7(b)(2)(i). These decision documents shall include any TI or no further action determinations, as well as ARAR waivers.

(e) *Concurrence.* When the responsible DoD component provides a draft decision document, the appropriate Federal or State regulatory agency or affected American Indian tribe, as well as to any Federal land manager having jurisdiction, custody, or control over property on which a range response will occur, will have forty-five (45) calendar days from the date of dispatch to provide its written concurrence or nonconcurrence with the draft decision document. An extension of up to thirty (30) additional days may be granted by the responsible DoD component, upon request. If no written response is received by the responsible DoD component within that forty-five (45)-day period, or seventy-five (75)-day period if an extension was granted, then the responsible DoD component may proceed with a range response action or invoke the dispute resolution process as set forth in § 178.15(b), or both. If a regulatory agency, American Indian tribe, or Federal land manager provides a timely nonconcurrence to the responsible DoD component, then the regulatory agency, American Indian tribe, or Federal land manager and the responsible DoD component will attempt to informally resolve the dispute. If they are unable to informally resolve the dispute to the satisfaction of the regulatory agency, American Indian tribe, or Federal land manager, then the regulatory agency, American Indian tribe, or Federal land manager, as the case may be, may utilize the formal dispute resolution mechanism provided in § 178.15(b).

(f) *Alternative timelines and dispute resolution.* The responsible DoD components and regulatory agencies, American Indian tribes, or Federal land managers may enter into agreements, either site-specific or area-wide, that provide for different timelines and dispute resolution procedures. These agreements may combine the review and dispute resolution procedures under this part with environmental remediation actions taken under other authorities or agreements in order to achieve efficiency and uniformity. Any such agreement will not make the review and dispute resolution processes or decision documents under this part

subject to the assessment of fines or penalties of any kind.

§ 178.15 Dispute resolution.

(a) If a dispute arises under this part, interested entities who may feel aggrieved by the responsible DoD component's response activities are encouraged to pursue alternative dispute resolution mechanisms with the responsible DoD component to resolve any differences over the response alternatives selected.

(b) If a dispute on a significant issue or document arises under § 178.14 that is not resolved informally between the Federal or State regulatory agency, American Indian tribe, or Federal land manager and the responsible DoD component at the project officer level, then the regulatory agency, American Indian tribe, Federal land manager, or responsible DoD component, as the case may be, may pursue the following formal dispute resolution procedure:

(1) The regulatory agency, American Indian tribe, or Federal land manager will provide a written statement of its dispute, along with any rationale or supporting documents, to the military commander representing the responsible DoD component. The military commander will engage in discussions with the regulatory agency, American Indian tribe, or Federal land manager in an attempt to arrive at a consensus and resolve the dispute.

(2) If no resolution is reached within thirty (30) calendar days of receipt of the statement of dispute, then the dispute may be elevated to the responsible DoD component's headquarters-level official, or his/her designee. The headquarters-level official for the responsible DoD component will engage in discussions with the regulatory agency, American Indian tribe, or Federal land manager to attempt to arrive at a consensus. If consensus is not achieved, the headquarters-level official for the responsible DoD component will announce his or her resolution of the dispute, along with a written statement of the supporting rationale.

(3) Within thirty (30) calendar days from announcement of a resolution under § 178.15(b)(2), the dispute may be elevated to the principal environmental policymaker for the responsible DoD component, or his or her designee. The principal environmental policymaker for the DoD component will engage in discussions with the regulatory agency, American Indian tribe, or Federal land manager to attempt to arrive at a consensus. If consensus is not achieved, the headquarters-level official for the DoD component will announce his or her resolution of the dispute, along with a written statement of the supporting rationale.

(4) In the case of a dispute involving Federal agencies with respect to the application and/or interpretation of this part, a Federal agency dissatisfied with the results of the dispute resolution process in paragraphs (b)(1) through (b)(3) of this section may raise its dispute within thirty (30) calendar days from announcement of a resolution under paragraph (b)(3) to the Secretary of the Military Department, or his or her designee who must be a political appointee whose appointment requires the advice and consent of the Senate, and to its Department Secretary/Agency Administrator, or his or her designee who also must be a political appointee whose appointment requires the advice and consent of the Senate. For disputes arising at a closed, transferred, or transferring range that is a facility listed on the NPL, the Secretary of the Military Department (or his or her designee) shall resolve issues related to explosives safety, and the EPA Administrator (or his or her designee) shall resolve issues related to the release or substantial threat of release of other constituents that are subject to CERCLA jurisdiction. If consensus is not achieved, then the Secretary of the Military Department (or his or her designee) and/or, as applicable, the EPA Administrator (or his or her designee) will announce his or her resolution of the dispute, along with a written statement of the supporting rationale. Nothing in this paragraph shall restrict or enlarge the authority of the EPA Administrator with respect to a facility on the NPL. If any party is dissatisfied with the resolution of the dispute, the dispute may be elevated to the Office of Management and Budget (OMB).

(5) In the case of a dispute involving a State regulatory agency or American Indian tribe with respect to the application and/or interpretation of this part, a State or tribe dissatisfied with the results of the dispute resolution process in paragraphs (b)(1) through (b)(3) of this section may raise its dispute within thirty (30) calendar days from announcement of a resolution under paragraph (b)(3) to the Secretary of the Military Department, or his or her designee who must be a political appointee whose appointment requires the advice and consent of the Senate, and to the Governor of the State or the American Indian tribal leader as appropriate, or their designee. If consensus is not achieved, the Department Secretary or his or her designee will announce his or her resolution of the dispute, along with a written statement of the supporting rationale, with respect to the application and interpretation of this part, and the State or tribe may pursue its authority under any applicable laws.

(6) The dispute resolution process set forth in this section may also be utilized by a DoD component as provided for elsewhere in this part (for example, when significant unresolved issues exist). The same levels for dispute resolution will be utilized in such cases; however, in such cases, the DoD component would provide a written statement of its dispute, along with supporting rationale, to the regulatory agency, American Indian tribe, or Federal land manager, as applicable.

(7) Range response activities will not be suspended during the dispute resolution process absent extraordinary circumstances. If the Secretary of a Federal land manager, or his or her designee whose appointment requires the advice and consent of the Senate, provides a written declaration with supporting rationale to the Department Secretary for the DoD component, stating that an immediate suspension of response activities during the full dispute resolution process is needed to prevent substantial environmental harm that would result from the performance of the activity itself, the responsible DoD component shall immediately suspend such activity, to the extent consistent with the protection of human health from any imminent and substantial danger. The suspension issue (i.e., whether to suspend response actions during the full dispute resolution process) will be raised directly to the Military Service Department Secretary, or his or her designee whose appointment requires the advice and consent of the Senate, consistent with paragraph (b)(4) of this section. The Secretary of the Federal land manager and the Military Service's Department Secretary will have 5 calendar days to arrive at a consensus on the suspension issue. If no consensus is reached, then the Federal land manager will have 5 calendar days to raise the suspension issue to OMB and request OMB to decide whether to continue the suspension of the response action. Five days following the submission of the suspension issue to OMB, the Military Service can resume activity unless OMB makes or has made a determination that the response actions should not resume pending resolution of the underlying dispute, or that an additional time period is needed to consider the merits of the arguments over whether the response action should be allowed to resume.

(8) These time limits may be extended on the mutual agreement of the parties to the dispute.

§ 178.16 Future land use for transfers within the Federal government.

(a) This section discusses how future land use issues are incorporated where a Federal land manager has jurisdiction, custody, or control over property on which a range response will or has occurred.

(b) For transferring ranges, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses that are identified and agreed to between the parties to the land transfer prior to the transfer. Where the transfer of the military range is mandated by statute, Executive Order, a previously concluded agreement between the Department of Defense and the Federal land manager, or under the terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager under which the Department of Defense used the property, and where future land uses are not identified or response activities are not specified in such statute, order, agreement, or instrument, any dispute will be resolved through utilization of the dispute resolution procedure identified in this part. Where the transfer is not legally mandated, disagreement over what the reasonably anticipated future land uses are may result in the transfer of the property to some other party, or no transfer. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

(c) For transferred ranges, in the absence of a prior agreement identifying reasonably anticipated future land uses or imposing land use restrictions, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses at the time of the range response. Reasonably anticipated future land uses will be decided by the Federal land manager with the concurrence of the Department of Defense. If there is disagreement, the dispute resolution procedure identified in this part will be utilized. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

(d) If there is disagreement over the reasonably anticipated future land uses, the dispute resolution provisions in § 178.15 will be utilized. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of unexploded ordnance on ranges.

(e) The Department of Defense will conduct and fund additional response actions where:

(1) The remedy fails (e.g., the remedy fails to meet previously identified remediation goals or response objectives; restrictions on access or other institutional controls fail not due to the acts or omissions of the Federal land manager but due to changes in the use of or access to surrounding parcels of property, such as those relating to population growth and migration; or through other developments out of the control of the Federal land manager); or

(2) Contamination (i.e., other constituents) caused by the Department of Defense of a previously unknown nature, location, magnitude, or extent creates conditions inconsistent with the reasonably anticipated land use that had been agreed upon or otherwise established; or

(3) Additional UXO is found that creates conditions inconsistent with the established reasonably anticipated land use; or

(4) Changes in applicable laws or regulations concerning cleanup standards necessitate reassessment of a previous response; or

(5) UXO technology limited the range response, with the result that the use of the land is more restricted than the established reasonably anticipated future land use, but later improvements in technology that are cost effective allow for removal of such a restriction and there is a current need for the removal of such restriction; or

(6) A statute, a final and binding court order, or a final and binding administrative order necessitates additional response actions to address UXO attributable to Department of Defense activities on the property, provided that the order is not occasioned by Federal land manager activities that are inconsistent with the reasonably anticipated future land use; or

(7) The remedy fails to protect previously unidentified significant environmental or cultural resources that would have been protected consistent with the established reasonably anticipated future land use and this part, had their existence been known at the time of the previous range response.

Dated: September 18, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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September 26, 1997

Part VIII

Department of Education

34 CFR Parts 674, 675, and 676

Federal Perkins Loan Program, Federal Work Study Program, and Federal Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840–AC40

Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: This document contains amendments to regulatory provisions that provide consistency among program regulations, correct minor technical errors and omissions in the existing regulations governing the programs, and conform with self-implementing provisions of the Higher Education Act of 1965, as amended (HEA). The student financial assistance programs authorized by title IV of the HEA, include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs).

EFFECTIVE DATE: These regulations take effect October 27, 1997.

FOR FURTHER INFORMATION CONTACT:

1. For the FWS and FSEOG programs: Ms. Kathy Gause, Campus-Based Grants Program Specialist, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–8242.

2. For the Federal Perkins Loan Program: Ms. Gail McLarnon, Campus-Based Loan Program Specialist, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–8242.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed in the preceding paragraph.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform.

As part of his response to the President's Regulatory Reinvention Initiative, and to improve program accountability to protect students and the Federal fiscal interest, the Secretary published amendments to the cash management regulations contained in part 668, subpart K, in the **Federal Register** (61 FR 60578–60610) on November 29, 1996 (effective date July 1, 1997). The campus-based programs regulations are amended to conform with the cash management regulations published on November 29, 1996, and to correct errors and omissions in the text of the campus-based programs existing regulations.

Although these regulations do not establish any new policies, there are issues surrounding the technical changes to the regulations that govern the Federal Perkins Loan Program that need further explanation. Several Federal Perkins Loan Program regulatory provisions are amended to conform with self-implementing provisions of the HEA. The following list summarizes those issues:

Federal Perkins Loan Program

Default Reduction Plan—Section 674.6

The Secretary amends § 674.6 to eliminate the option allowing institutions to submit a statement to the Secretary indicating that they, in order to satisfy the requirement to establish and implement a default reduction plan for their Federal Perkins Loan Program, agree to apply to their Federal Perkins Loan Program the default management plan in place for their Federal Family Education Loan (FFEL) Program. This change is being made because as of July 1, 1996, institutions participating in the FFEL Program are no longer required to develop default management plans.

Student Eligibility—Section 674.9

An incorrect cross-reference has been corrected in paragraph (a) by removing ''34 CFR 668.7,'' and adding, in its place, ''34 CFR 668.32.''

Fiscal Procedures and Records—Section 674.19

An incorrect cross-reference has been corrected in paragraph (b) by removing ''§ 668.164,'' and adding, in its place, ''§ 668.163.''

Promissory Note—Section 674.31 and Repayment—Section 674.33

The Secretary amends §§ 674.31 and 674.33 to add language requiring institutions to exclude periods of forbearance in determining the 10-year repayment period for a Federal Perkins loan. This language, which reflects section 464(c)(4) of the HEA, was inadvertently omitted from the current Federal Perkins Loan Program regulations.

The Secretary also amends § 674.33(b)(6)(ii) by adding a reference to a $30 minimum monthly payment rate for Direct loans. This reference was inadvertently omitted when the Secretary published final regulations on November 30, 1994, that revised the minimum monthly payment rate language in this section to reflect the new $40 rate for Federal Perkins loans in accordance with the HEA.

Deferment of Repayment—Section 674.34

The Secretary amends § 674.34(h) to clarify that an institution may not include the period of the post-deferment grace period in determining the 10-year repayment period for a Federal Perkins loan in accordance with section 464(c)(2)(A)(iv) of the HEA.

Deferment of Repayment—Federal Perkins Loans Made Before July 1, 1993—Section 674.35, Deferment of Repayment—Direct Loans Made on or After October 1, 1980, but Before July 1, 1993—Section 674.36, and Deferment of Repayment—Direct Loans Made Before October 1, 1980 and Defense Loans—Section 674.37

The Secretary amends §§ 674.35, 674.36, and 674.37 to add the hardship deferment to the list of the qualifying deferment periods that are not to be included in the 10-year repayment period for a Federal Perkins loan. This change reflects section 464(c)(4) of the HEA and was inadvertently omitted from the Federal Perkins Loan Program regulations.

Collection Procedures—Section 674.45

The Secretary amends § 674.45(c)(1)(ii)(A) by eliminating the phrase ''unless specifically prohibited by State law,'' in order to make this paragraph consistent with section 484A of the HEA and § 674.45(g). Final regulations published on November 30, 1994, in accordance with the HEA, added § 674.45(g), the provisions of which specifically preempt State statutes, regulations, or rules that would hinder satisfaction of requirements that an institution must carry out in collecting Federal Perkins loans.

Cancellation Procedures—Section 674.52

The Secretary amends § 674.52(d)(2) by adding § 674.58 to the cross-references. This cross-reference, which reflects the changes made to section 464(c)(2)(A)(iv) of the HEA, was inadvertently omitted from the Federal

Perkins Loan Program regulations. The addition of a cross-reference to § 674.58 allows a borrower with a loan made on or after July 1, 1993, to defer repayment while doing service that qualifies for cancellation in a Head Start program.

Federal Work-Study Program

There are no major changes to the FWS Program. However, the Secretary has made some minor technical changes as described in the following paragraphs.

Student Eligibility—Section 675.9

An incorrect cross-reference has been corrected in paragraph (a) by removing ''34 CFR 668.7,'' and adding, in its place, ''34 CFR 668.32.''

Fiscal Procedures and Records—Section 675.19

An incorrect cross-reference has been corrected in paragraph (a)(3) by removing ''§ 668.164,'' and adding, in its place, ''§ 668.163.''

Eligible Employers and General Conditions and Limitations on Employment—Section 675.20

The Secretary amends § 675.20(b)(1) to add the word ''public'' after the word ''local,'' and to delete the phrase ''(see appendix B for a sample agreement)'' in paragraph (b)(1). Appendix B was previously removed from regulations and is now included in the Federal Student Financial Aid Handbook

Employment Provided by a Federal, State, or Local Public Agency, or a Private Nonprofit Organization—Section 675.22

The Secretary amends § 675.22 to add the word ''public'' after the word ''local'' in the section heading.

Nature and Source of Institutional Share—Section 675.27

A typographical error has been corrected in the authority citation following the section.

Federal Supplemental Educational Opportunity Grant Program

There are no major changes to the FSEOG Program. However, the Secretary has made some minor technical changes as described in the following paragraphs.

Student Eligibility—Section 676.9

An incorrect cross-reference has been corrected in paragraph (a) by removing ''34 CFR 668.7,'' and adding, in its place, ''34 CFR 668.32.''

Fiscal Procedures and Records—Section 676.19

An incorrect cross-reference has been corrected in paragraph (a)(2) by removing ''§ 668.164,'' and adding, in its place, ''§ 668.163.''

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments that correct current regulations.

The changes will not have a significant economic impact on the institutions affected.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document are necessary to correct minor technical errors, to implement mandatory statutory provisions, and to correct omissions in the campus-based programs existing regulations. The changes in this document do not establish any new policies. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

The Federal Perkins Loan and Federal Work-Study programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Grant programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: September 23, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; and 84.038 Federal Perkins Loan Program)

The Secretary amends parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

§ 674.6 [Amended]

2. Section 674.6 is amended by removing the semicolon at the end of paragraph (a)(1) and adding, in its place, '', or''; by removing ''; or'' at the end of paragraph (a)(2) and by adding, in its place, a period; and by removing paragraph (a)(3).

§ 674.9 [Amended]

3. Section 674.9(a) is amended by removing ''34 CFR 668.7'' and by adding, in its place, ''34 CFR 668.32''.

§ 674.19 [Amended]

4. Section 674.19(b) is amended by removing ''§ 668.164'' and adding, in its place, ''§ 668.163''.

5. Section 674.31(b)(2)(i)(D) is revised to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), forbearance (see § 674.33(d)), or deferments (see §§ 674.34, 674.35, and 674.36);

* * * * *

6. Section 674.33 is amended by adding ''for a Direct Loan or'' after ''$30'' in paragraph (b)(6)(ii), and by adding a new paragraph (d)(8) to read as follows:

§ 674.33 Repayment.

* * * * *

(d) * * *

(8) The institution may not include the periods of forbearance described in this paragraph in determining the 10-year repayment period.

* * * * *

7. Section 674.34(h) is revised to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

* * * * *

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section in determining the 10-year repayment period.

* * * * *

8. Section 674.35 is amended by removing ''(see § 674.56)'' in paragraph (c)(1) and adding, in its place, ''(see § 674.59)''; by removing ''(see § 674.57)'' in paragraphs (c)(3) and (4) and adding, in its place, ''(see § 674.60)''; by removing paragraph (g); by redesignating paragraph (i) as paragraph (g); by redesignating paragraph (h) as paragraph (i); and by adding a new paragraph (h) to read as follows:

§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.

* * * * *

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section when determining the 10-year repayment period.

* * * * *

§ 674.36 [Amended]

9. Section 674.36 is amended by removing ''(see § 674.56)'' in paragraph (c)(1) and adding, in its place, ''(see § 674.59)''; by adding ''(see § 674.60)'' before the semicolon in paragraphs (c)(2) and (c)(3); and by removing ''and'' after ''(c),'' and adding '', and (e)'' after ''(d)'' in paragraph (f).

§ 674.37 [Amended]

10. Section 674.37 is amended by removing ''(see § 674.56)'' in paragraph (c)(1) and adding in its place ''(see § 674.59)''; by adding ''(see § 674.60)'' before the semicolon in paragraph (c)(2) and before the period in paragraph (c)(3); and by removing ''and (c)'' after ''(b)'' and adding, in its place, '', (c), and (e)'' in paragraph (d).

§ 674.45 [Amended]

11. Section 674.45(c)(1)(ii)(A) is amended by removing '', unless specifically prohibited by State law,'' after ''shall''.

§ 674.52 [Amended]

12. Section 674.52(d)(2) is amended by removing ''or'' before ''674.57'' and by adding '', or 674.58'' after ''674.57''.

PART 675—FEDERAL WORK-STUDY PROGRAMS

13. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

§ 675.9 [Amended]

14. Section 675.9(a) is amended by removing ''34 CFR 668.7'' and adding, in its place, ''34 CFR 668.32''.

§ 675.19 [Amended]

15. Section 675.19(a)(3) is amended by removing ''§ 668.164'' and adding, in its place, ''§ 668.163''.

§ 675.20 [Amended]

16. Section 675.20(b)(1) is amended by adding ''public'' after ''local'' in the first sentence and by removing in the second sentence ''(see Appendix B for a sample agreement)''.

§ 675.22 [Amended]

17. Section 675.22 is amended by adding in the heading ''public'' after ''local''.

§ 675.27 [Amended]

18. Section 675.27 is amended by revising the authority citation following the section to read as follows:

(Authority: 42 U.S.C. 2754)

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.9 [Amended]

20. Section 676.9(a) is amended by removing ''34 CFR 668.7'' and adding, in its place, ''34 CFR 668.32''.

§ 676.19 [Amended]

21. Section 676.19(a)(2) is amended by removing ''§ 668.164'' and adding, in its place, ''§ 668.163''.

[FR Doc. 97–25658 Filed 9–25–97; 8:45 am]

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