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December 9, 1997

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–100–1]

Pine Shoot Beetle; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations to add 78 counties in Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin to the list of quarantined areas. This action is necessary to prevent the spread of the pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: Interim rule effective December 3, 1997. Consideration will be given only to comments received on or before February 9, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–100–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–100–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 505 South Lenola Road, Suite 201, Moorestown, NJ, 08057–1549, (609) 753–5073; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8717, E-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees. PSB can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur, and in the new growth of healthy trees. During ''maturation feeding,'' young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Adults can fly at least one kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishement of PSB populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of PSB.

Surveys recently conducted by State and Federal inspectors revealed additional areas infested with PSB in eight States that were previously known to contain infested areas (Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia) and one area infested with PSB in a State that was not previously known to contain infested areas (Wisconsin). Copies of the surveys may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating Boone, Bureau, De Kalb, La Salle, Lee, McLean, Ogle, Piatt, Putnam, and Stephenson Counties, IL; Carroll, Fountain, Madison, Randolph, Warren, and Wayne Counties, IN; Garrett and Washington Counties, MD; Alcona, Alpena, Antrim, Benzie, Charlevoix, Crawford, Emmet, Gladwin, Grand Traverse, Kalkasa, Lake, Luce, Mackinac, Manistee, Mason, Mecosta, Missaukee, Montmorency, Muskegon, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, and Wexford Counties, MI; Cayuga, Schuyler, Seneca, Tompkins, Wayne, and Yates Counties, NY; Allen, Auglaize, Defiance, Hancock, Hardin, Harrison, Henry, Hocking, Jefferson, Licking, Logan, Marion, Mercer, Morrow, Perry, Putnam, Union, and Van Wert Counties, OH; Cambria, Indiana, Potter, Somerset, and Washington Counties, PA; Brooke and Ohio Counties, WV; and Grant County, WI, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent PSB from spreading to noninfested areas of the United States.

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

and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

The PSB regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. This rule amends these regulations by adding 78 counties in 9 States to the list of quarantined areas. This action is necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States.

Currently, there are approximately 1,046 nursery operations in the 78 newly regulated counties. Of those, approximately 717 are considered small entities. We have not determined the size of the remaining 329 nursery operations in the following 6 counties: Boone County, IL; Muskegon and Ottawa Counties, MI; Wayne County, NY; Allen County, OH; and Indiana County, PA. Small nurseries are defined as those entities with annual sales of less than $150,000. Most of these nurseries, both large and small, specialize in production of deciduous landscape products, but some also produce rooted pine Christmas trees and some pine nursery stock. Most of the nurseries that produce rooted pine Christmas trees and pine nursery stock will not be notably affected by this rule, either because these commodities comprise a very minor share of their products or because they serve largely local populations.

Other Christmas tree producers and logging operations in the 78 newly regulated counties may also be affected by this rule. However, at this time, we are unable to determine the number of these types of small entities in the newly regulated counties. We invite comments to help us determine the number of these types of small entities that may incur benefits or costs from the implementation of this rule.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits, or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of PSB.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the quarantine of the 78 counties listed in this document is necessary to prevent the artificial spread of PSB.

This interim rule contains no reporting or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of pine products from these 78 newly regulated counties will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia, by adding new counties in alphabetical order to read as set forth below.

b. In paragraph (c), by adding, in alphabetical order, a new entry for Wisconsin to read as set forth below.

c. By revising paragraph (d) to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

ILLINOIS

Boone County. The entire county.
Bureau County. The entire county.

* * * * *

De Kalb County. The entire county.

* * * * *

La Salle County. The entire county.

* * * * *

Lee County. The entire county.

* * * * *

McLean County. The entire county.
Ogle County. The entire county.
Piatt County. The entire county.
Putnam County. The entire county.
Stephenson County. The entire county.

* * * * *

INDIANA

* * * * *

Carroll County. The entire county.

* * * * *

Fountain County. The entire county.

* * * * *

Madison County. The entire county.

* * * * *

Randolph County. The entire county.

* * * * *

Warren County. The entire county.
Wayne County. The entire county.

* * * * *

MARYLAND

* * * * *

Garrett County. The entire county.
Washington County. The entire county.

MICHIGAN

Alcona County. The entire county.

* * * * *

Alpena County. The entire county.
Antrim County. The entire county.

* * * * *

Benzie County. The entire county.

* * * * *

Charlevoix County. The entire county.

* * * * *

Crawford County. The entire county.

* * * * *

Emmet County. The entire county.

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Gladwin County. The entire county.
Grand Traverse County. The entire county.

* * * * *

Kalkasa County. The entire county.

* * * * *

Lake County. The entire county.

* * * * *

Luce County. The entire county.
Mackinac County. The entire county.

* * * * *

Manistee County. The entire county.
Mason County. The entire county.
Mecosta County. The entire county.

* * * * *

Missaukee County. The entire county.

* * * * *

Montmorency County. The entire county.
Muskegon County. The entire county.
Newaygo County. The entire county.

* * * * *

Oceana County. The entire county.
Ogemaw County. The entire county.
Osceola County. The entire county.
Oscoda County. The entire county.
Otsego County. The entire county.
Ottawa County. The entire county.
Presque Isle County. The entire county.

* * * * *

Wexford County. The entire county.

NEW YORK

* * * * *

Cayuga County. The entire county.

* * * * *

Schuyler County. The entire county.
Seneca County. The entire county.

* * * * *

Tompkins County. The entire county.
Wayne County. The entire county.

* * * * *

Yates County. The entire county.

OHIO

Allen County. The entire county.

* * * * *

Auglaize County. The entire county.

* * * * *

Defiance County. The entire county.

* * * * *

Hancock County. The entire county.
Hardin County. The entire county.
Harrison County. The entire county.
Henry County. The entire county.
Hocking County. The entire county.

* * * * *

Jefferson County. The entire county.

* * * * *

Licking County. The entire county.
Logan County. The entire county.

* * * * *

Marion County. The entire county.

* * * * *

Mercer County. The entire county.
Morrow County. The entire county.

* * * * *

Perry County. The entire county.

* * * * *

Putnam County. The entire county.

* * * * *

Union County. The entire county.
Van Wert County. The entire county.

* * * * *

PENNSYLVANIA

* * * * *

Cambria County. The entire county.

* * * * *

Indiana County. The entire county.

* * * * *

Potter County. The entire county.
Somerset County. The entire county.

* * * * *

Washington County. The entire county.

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WEST VIRGINIA

Brooke County. The entire county.

* * * * *

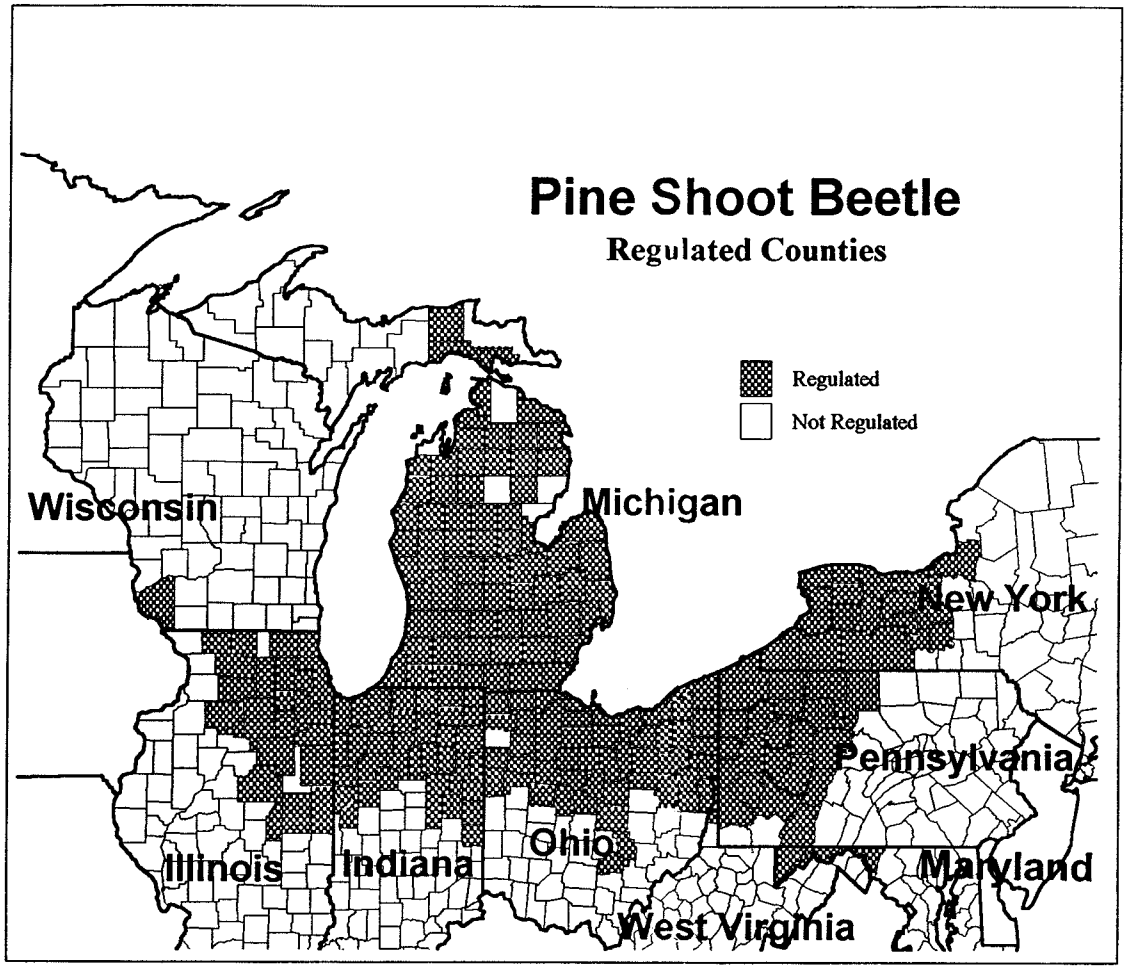
Ohio County. The entire county.

WISCONSIN

Grant County. The entire county.

(d) A map of the quarantined areas follows:

BILLING CODE 3410–34–P



BILLING CODE 3410–34–C

Done in Washington, DC, this 3rd day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32194 Filed 12–8–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–37–AD; Amendment 39–10236; AD 97–25–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL–44 series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective January 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Flight Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model CL–44 series airplanes was published in the **Federal Register** on May 28, 1997 (62 FR 28813). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

Request to Withdraw the Proposal

One commenter, the manufacturer, considers that a revision to the Limitations Section of the AFM, issued on December 6, 1996, fully meets the intent of the proposed rule. Therefore, the manufacturer concludes that an AD for the Model CL–44 series airplane is not required.

The FAA does not concur that inserting the AFM revision referenced by the commenter into the AFM provides an adequate method of compliance with the final rule. That revision does not contain reference to the fact that failure to observe the prohibition may cause loss of airplane control, and as such, does not completely meet the intent of the rule. The FAA acknowledges that revising the AFM to add the phrase ''loss of airplane control'' as a consequence of failure to observe the prohibition would provide adequate compliance with the requirements of the final rule. Therefore, the FAA will consider requests for approval of an alternative method of compliance in accordance with the provisions of paragraph (b) of this AD.

Request to Clarify That No Accidents Occurred on the CL–44

This same commenter notes that the text of the proposed rule does not make it clear that no accidents have occurred on Model CL–44 series airplanes as a result of ground propeller beta range being used improperly during flight. The commenter requests that the FAA clarify this in the final rule.

The FAA acknowledges that no accidents have occurred involving Model CL–44 series airplanes that have been attributed to ground propeller beta range being used improperly during flight. However, the FAA considers that the wording of the Summary section of the proposed rule that states, ''This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight,'' is correct. The fact that the FAA did not specifically name each manufacturer and airplane model on which those incidents or accidents occurred does not negate the fact that such incidents and accidents did occur on airplanes equipped with turboprop engines. The FAA finds that no change to the final rule is necessary.

Clarification of the Rule

Since the issuance of the NPRM, the FAA has noted that operations manuals for certain airplanes equipped with Dart turboprop engines may contain reference to ''ground fine pitch'' rather than ''operations below the flight idle stop,'' as specified in the proposed rule. Although the operations manuals refer to both of those phrases, the FAA finds that some clarification is necessary. Therefore, the FAA has added the phrase ''(i.e., ground fine pitch)'' in paragraph (a) of the final rule as a parenthetical definition of ''operations below the flight idle stop'' in the final rule.

Conclusion

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

Cost Impact

The FAA estimates that 1 Bombardier Model CL–44 series airplane of U.S. registry will be affected by this AD, that it will take approximately 1 work hour to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $60 for the one affected airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–25–12 Bombardier, Inc. (Formerly Canadair): Amendment 39–10236. Docket 97–NM–37–AD.

Applicability: All Model CL–44 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop (i.e., ground fine pitch) while

the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

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

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

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

(d) This amendment becomes effective on January 13, 1998.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32112 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 295

[Docket No. 970822200–7272–02]

RIN 0693–AB44

Advanced Technology Program

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is issuing a final rule which amends the implementing regulations for the Advanced Technology Program (ATP). Major changes include an increase in the cost-sharing requirement for large companies applying as single proposers in future competitions; modification of the ATP evaluation criteria for project selection to place greater emphasis on joint ventures and consortia with a broad range of participants; and a new rule for the valuation of transfers between separately-owned joint venture members which applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

EFFECTIVE DATE: This rule is effective December 9, 1997.

FOR FURTHER INFORMATION CONTACT:

To receive additional program information, contact Barbara Lambis at (301) 975–4447.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology is issuing a final rule which amends regulations found at part 295 of title 15 of the Code of Federal Regulations, which implements the Advanced Technology Program (ATP). In a statement to Congress in March of 1997, Secretary of Commerce William M. Daley announced a Departmental study of several issues raised by Members of Congress and others concerning the policies and procedures of the ATP. The study was designed to make recommendations for possible changes to improve the effectiveness of the program. Following issuance of a 30-day notice of opportunity for public comment on ways to improve the operation of the ATP, recommendations for possible changes were made to improve the effectiveness of the program.

In order to implement the recommendations and the decisions of Secretary Daley, the National Institute of Standards and Technology is today issuing changes to the operating procedures of the Advanced Technology Program found at part 295 of title 15 of the Code of Federal Regulations. These changes strengthen the fundamental mission of the ATP: for Government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation. Such a unique government-industry research partnership fosters the acceleration not only of dramatic gains in existing industries, but also acceleration of the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets and work to spawn industries of the 21st century. Furthermore, the changes also ensure that the fundamental strengths of the ATP remain unchanged, especially the requirement that the ATP continue to be a wholly merit-driven program based on peer review.

Description of the Changes

Changes to part 295 include revisions on the following topics (please see the analysis of comments below for additional details):

- Revised section 295.32(b) increases the cost-sharing requirement for large companies applying as single proposers in future competitions. ''Large businesses,'' as the term is defined in the revised Sec. 295.2(k), are required to cost-share at a minimum of 60 percent.
- The term ''large business'' is defined as including any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds. In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.
- The ATP evaluation criteria for project selection are modified to: (1) place greater emphasis on joint ventures and consortia with a broad range of participants; and (2) better define the multi-step selection process based on all of the criteria in Sec. 295.6.
- A new rule is established in Sec. 295.25 regarding the valuation of transfers between separately-owned joint venture members. The rule applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned venture members.
- Also, a number of administrative and clerical changes are proposed to be implemented to part 295 for consistency and clarity.

Summary of Comments

On September 17, 1997, NIST published a notice of proposed rulemaking in the **Federal Register** (62 FR 48802). In response to this notice three letters were received; one from a not-for-profit research organization, one from a U.S.-owned for-profit company, and one from an individual. An analysis of the comments follows.

Section 295.2 Definitions—(1 Comment)

One commenter stated that the definition of ''matching funds'' under Section 295.2(1) eliminates reference to in-kind contribution of personnel and requested clarification on whether NIST considers personnel costs to be a cash contribution that would not be subject to the 30 percent limitation on in-kind.

NIST Response: Under the ATP program, personnel contributions are

considered as ''cash'' contributions when made by funding recipients and, therefore, would not be subject to the 30 percent limitation.

Section 295.3 Eligibility of United States and Foreign-Owned Businesses—(1 Comment)

One commenter stated that Section 295.3, ''Eligibility of United States and foreign-owned business'', is unfair to U.S. citizens and makes the goal outlined in Section 295.1 ''Purpose'', nearly impossible to achieve. The commenter believes that we should use the best technology in the world to achieve the ATP goals of ''high pay-off.'' The commenter suggests that the ownership rule be changed to that of individual representatives who must be U.S. citizens regardless of employer, and believes this would be fair to all U.S. citizens, who have a right to be employed in the U.S. by any legal entity. The commenter concludes that change would make it possible for participating coalitions to consider the best technology in the world to help the U.S. develop the best economic growth in a competitive, global economy.

NIST Response: The statutory authority for the ATP, Section 28 of the NIST Act (15 U.S.C. 278n), stipulates ATP eligibility requirements. Only Congress has the authority to amend this statute. We therefore cannot make any changes based on these comments.

Section 295.6 Criteria for Selection—(1 Comment)

One commenter requested clarification of what it meant by ''cost-sharing'' in section 295.6(d)(1), Level of commitment of proposer, which refers to contributions of personnel, equipment, facilities, and cost-sharing.

NIST Response: The ''level of commitment'' criterion reflects the extent to which a proposer has demonstrated a commitment to the project with, for example, cash, personnel, scientific equipment, and research facilities. Cost-sharing as used in this selection criteria includes cash and in-kind contributions and the level of the total contribution, i.e., low, average, or high.

Section 295.12 Special Reporting and Auditing Requirements—(2 Comments)

One commenter suggested that the ATP award stipulate the reporting requirements needed and stated that the audit requirements are a duplication of government surveillance and are not in the spirit of contractor self governance programs. Companies which have resident cognizant Federal auditors should be allowed to utilize such auditors to conduct the audits rather that having to incur additional expenses to hire an outside Certified Public Account (CPA). The commenter recommends that the audit requirement apply on an as-needed basis for firms who do not have systems to support government contracting.

NIST Response: Each ATP award includes guidance on the financial, business, and technical reporting requirements. The audit requirement is not meant to be duplicative of existing government audit surveys. Resident cognizant Federal auditors may conduct the required audits in lieu of a private CPA firm.

A second commenter noted that 295.12 is noted as being revised and then removed.

NIST Response: This is a typographical error. Section 295.12 is being revised; however, section 295.14 is being removed.

Section 295.25 Special Rule for the Valuation of Transfers Between Separately-Owned Joint Venture Members—(1 Comment)

One commenter stated that section 295.25 will serve as a disincentive for small companies to become joint venture partners and they will likely only provide products and services as subcontractors. The commenter further stated that the proposed special rule is not mandated under the ATP statute and further appears to be at odds with the ATP objective and with all other government pricing principles. The commenter supports the use of GSA schedule price as a method of valuing products and services and asserts that the use of other pricing methods for the ATP program could jeopardize preexisting agreements. He also disagrees that transferred services should be included in the 30 percent restriction on in-kind contributions.

NIST Response: The ATP is a cost-shared, high-risk research and development program and, therefore, it is expected that participants share in risk taking. The issues related to an equitable valuation of transfers among joint venture participants appear to be unique to this program, therefore, guidelines from other Federal programs would not necessarily apply. In the ATP, reimbursement of the government's share of the costs is based on actual costs incurred during the period of cost sharing rather than on recovering sunk costs (previously incurred R&D costs). The Department of Commerce deems this approach to be a reasonable compromise between a very strict interpretation of the intent of the ATP legislation and the more traditional policy of using GSA Schedule pricing as the basis for valuation. The strict interpretation would, for example, result in a transfer of previously-developed software from one joint venture participant to another being valued for matching funds purposes essentially at zero. We recognize that such an interpretation would cause hardship for many ATP proposers, hence the compromise. ATP recognizes that some small companies may not have the resources to contribute a significant portion of the cost-sharing, however, joint ventures often have a mix of other medium and/or large businesses that, in the aggregate, can provide the required cost-sharing.

Section 295.32 Limitations on Assistance—(1 Comment)

Section 295.32(b), which raises the cost sharing of a single company to 60 percent, and Section 295.6, regarding the evaluation criteria, will make it more difficult for single companies to participate. The commenter further states that no rationale is given for the changes.

NIST Response: ATP agrees that the change could make it more difficult for some large businesses to participate in ATP as single company proposers. There has been much heated debate in the Congress and elsewhere concerning cost sharing in ATP and the role of large firms applying as single company proposers. Many people have expressed the viewpoint that large businesses should be expected to support more than 50 percent of the total project cost. (Under the previous rule, large companies with very low indirect costs could recover more than 50 percent of total project costs.) DOC believes that the change will result in a broader consensus that the ATP's policies for large businesses are fair and appropriate.

Additional Information

Effective Date of the Final Rule

This final rule relating to grants, benefits, and contracts is exempt from the delayed effective date requirement, and accordingly, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), is therefore being made effective immediately without a 30 day delay in effective date.

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient

to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities. (5 U.S.C. 605(b)). This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. Specifically, based on past experience and currently foreseen budges, the ATP would expect to receive only a few hundred proposals annually from small businesses, and from these, to make under 100 awards. The program is entirely voluntary for the participants that seek funding.

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection of information requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). The collection of information requirements have been approved under OMB Control Number 0693–0009. The public reporting burden per respondent is estimated to range between 20 and 30 hours per submission of the proposal and 3 hours annually for recipients of financial assistance to provide monitoring reports. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Comments on the burden estimates, or any other aspect of the information requirements, should be addressed to Barbara Lambis, Room A333, Administration Building National Institute of Standards and Technology, Gaithersburg, MD 20899.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

Executive Order 12372

Executive Order 12372 ''Intergovernmental Review of Federal Programs'' does not apply to this program.

List of Subjects in 15 CFR Part 295

Inventions and patents, Laboratories, Research, Science and technology, Scientists.

Dated: December 3, 1997.

Elaine Bunten-Mines,

Director, Program Office.

For reasons set forth in the preamble, Title 15, part 295 of the Code of Federal Regulations is amended as follows:

PART 295—ADVANCED TECHNOLOGY PROGRAM

1. The authority citation for Part 295 continues to read as follows:

Authority: 15 U.S.C. 278n.

2. Section 295.1 is revised to read as follows:

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program (ATP) is to assisted United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:

(1) High risk, because the technical challenges make success uncertain;

(2) High pay-off, because when applied they offer significant benefits to the U.S. economy; and

(3) Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.

(b) The rules in this part prescribe policies and procedures for the award of cooperative agreements under the Advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, the rules in this part address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

(c) In carrying out the rules in this part, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.

3. Section 295.2(c) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(c) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

* * * * *

4. Section 295.2 is further amended by revising the reference ''§ 295.2(r)'' in paragraph (d) to read ''§ 295.2(q)'' and by removing paragraph (e), redesignating paragraphs (f) through (k) as paragraphs (e) and through (j), removing paragraph (n), redesignating paragraphs (o) through (r) as paragraphs (n) through (q), and adding new paragraph (k) to read as follows:

§ 295.2 Definitions.

* * * * *

(k) The term *large business* for a particular ATP competition means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by § 295.7(a). In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.

* * * * *

5. The newly designated § 295.2(g) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(g) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

* * * * *

6. The newly designated § 295.2(h) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(h) The term *industry-led joint research and development venture* means a joint research and development venture that consists of two or more separately-owned, for-profit businesses that perform research and development in the project; control the venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. An independent research organization may perform administrative tasks on behalf of an industry-led joint research and development venture, such as handling receipts and disbursements of funds and making antitrust filings.

* * * * *

7. Redesignated § 295.2(j)(1)(vi) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(j) * * *

(1) * * *

(vi) Any combination of the purposes specified in paragraphs (j)(1) (i), (ii), (iii), (iv) and (v) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (j)(2) of this section.

* * * * *

8. Section 295.2(l) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(l) The term *matching funds or cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at § 295.25, the value of in-kind contributions shall be determined in accordance with OMB Circular A–110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable federal cost principles.

* * * * *

9. Section 295.3(c) is added as follows:

§ 295.3 Eligibility of United States and foreign-owned businesses.

* * * * *

(c) Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).

10. Section 295.4 is revised to read as follows:

§ 295.4 The selection process.

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. A source evaluation board (SEB) is established to ensure that all proposals receive careful consideration. In the first step, called ''preliminary screening,'' proposals are eliminated that do not meet the requirements of this part or the Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to § 295.7; or, in the case of joint ventures, requests more than a minority share of funding. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal or forward it to a later stage in the review process based upon the earlier review.

(b) In the second step, referred to as the ''technical and business review,'' proposals are evaluated under the criteria found in § 295.6. Proposals judged to have the highest merit based on the selection criteria receive further consideration and are referred to as ''semifinalists.''

(c) In the third step, referred to as ''selection of finalists,'' the Program prepares a final scoring and ranking of semifinalist proposals. During this step, the semifinalist proposers may be asked to make oral presentations on their proposals at NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as ''selection of awardees,'' the Selecting Official selects funding recipients from among the finalists, based upon: (1) The rank order of the proposals on the basis of all selection criteria (§ 295.6);

(2) Assuring an appropriate distribution of funds among technologies and their applications; and

(3) The availability of funds. The Selecting Official is responsible for ensuring that only proposals that meet the Program selection criteria receive awards. The Program reserves the right to withhold awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) If a joint venture is ranked as a finalist, but the Program determines that the joint venture contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being completed successfully, the Program may inform the proposer of the deficiencies and enter into negotiations with the proposer in an effort to remedy the deficiencies. If appropriate, funding up

to 10 percent of the amount originally requested by the proposer may be awarded by the Program to the proposer to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the proposer to that proposer.

(f) NIST reserves the right to negotiate with proposers selected to receive awards the cost and scope of the proposed work, e.g., to add or delete a task(s) to improve the probability of success or to make the proposal more consistent with ATP's mission.

11. Section 295.6 is revised to read as follows:

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this Program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines that it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other selection criteria. Similarly, no proposal will be funded that does not require Federal support or that is product development rather than high risk R&D. Each of the subfactors within a selection criterion shall be weighted equally.

(a) *Scientific and technical merit* (30 percent).

(1) Quality, innovativeness, and cost-effectiveness of the proposed technical program, that is, uniqueness with respect to current industry practice. Proposers shall compare and contrast their approaches with those taken by other domestic and foreign companies working in the same field.

(2) Appropriateness of the technical risk and feasibility of the project, that is, is there a sufficient knowledge base to justify the level of technical risk involved, and is the risk commensurate with the potential payoff. Projects should press the state of the art while still having credibility with regard to technical approach.

(3) Coherency of the technical plan and clarity of vision of the technical objectives, and the degree to which the technical plan meets the project and, in the case of focused program competitions, program goals.

(4) Integrated, forward-looking, team approach to the project. This factor includes the extent to which the R&D team will take into account aspects such as research and raw material suppliers and considerations of manufacturability and requirements of customers, regulatory concerns, safety issues, and environmental impacts. It also includes the extent to which all of the necessary technical disciplines will be brought into the R&D and how R&D, manufacturing, and marketing will work together in an integrated fashion.

(5) Potential broad impact on U.S. technology and knowledge base.

(b) Potential net broad-based economic benefits (20 percent). Potential to improve U.S. economic growth, taking into account the timeliness of the proposal; that is, the potential project results will not occur too late or too early to be competitively useful, and the degree to which ATP support is essential for the achievement of the broad-based benefits from the proposed R&D and appropriateness of proposed R&D for ATP support. This criterion takes into consideration the likelihood of the results being achieved in the same general time frame by the proposer or by other U.S. researchers without ATP support, and whether other Federal agencies or other sponsors are already funding very similar kinds of work. Projects will not be selected if the Program judges that Federal support is not needed. In assessing the potential for broad-based economic benefits, emphasis is placed on a strong potential for spillover benefits extending well beyond those accruing to the awardee(s). Benefits are compared against the costs of the proposal to determine cost-effectiveness of the proposal.

(c) Adequacy of plans for eventual commercialization (20 percent).

(1) Evidence that if the project is successful, the proposers will pursue further development of the technology toward commercial application, either through their own organization(s) or through others.

(2) Degree to which proposal identifies potential applications of the technology and provides evidence that the proposer has credible plans to assure prompt and widespread use of the technology if the R&D is successful and to ensure adequate protection of the intellectual property by the participant(s) and, as appropriate, by other U.S. businesses.

(d) Level of commitment and organization structure (20 percent).

(1) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and cost-sharing. Extent to which the proposer assigns the company's best people to the project. Priority given to this work in relation to other company activities.

(2) For joint ventures, the extent to which the joint venture has been structured (vertical integration, horizontal integration, or both) so as to include sufficient participants possessing all of the skills required to complete successfully the proposed work.

(3) For joint ventures, the extent to which participation by small businesses is encouraged and is a key component of the proposal.

(4) Appropriateness of subcontractor/supplier/collaborator participation and relationships (where applicable). For large company single proposers, the extent to which subcontractor teaming arrangements are featured and are a key component of the proposal.

(5) Clarify and appropriateness of management plan. Extent to which the proposers have clarified who is responsible for each task, and the chain of command. Extent to which those responsible for the work have adequate authority and access to higher level management.

(e) Experience and qualifications (10 percent).

(1) Adequacy of proposer's facilities, equipment, and other technical, financial, and administrative resources to accomplish the proposed program objectives. This factor includes consideration of resources possessed by subcontractors to the proposer or other collaborators.

(2) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome barriers to meeting project objectives.

(3) Past performance of the company or joint venture members in carrying out similar kinds of efforts successfully, including technology application. Consideration of this factor in the case of a start-up company or new joint venture, will take into account the past performance of the key people in carrying out similar kinds of efforts.

12. Section 295.12 is revised to read as follows:

§ 295.12 Special reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor ''best effort'' progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program

evaluation. The audit standards to be applied to ATP awards are the ''Government Auditing Standards'' (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specified audit guidelines. The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce's Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

13. Section 295.14 is removed.

14. Section 295.22 is revised to read as follows:

§ 295.22 Limitations on assistance.

(a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

15. Section 295.25 is added to subpart B as follows:

§ 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

(a) *Applicability.* This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

(b) *Rule.* The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) *Definition.* The term ''best customer price'' shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

16. Sections 295.31 and 295.32 are revised to read as follows:

§ 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses, subject to the limitations set out in §§ 295.3 and 295.32.

§ 295.32 Limitations on assistance.

(a) The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.

(b) For proposals submitted to ATP after December 31, 1997, awards to large businesses made under this subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

(c) Awards under this subpart may not exceed $2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

17. In part 295 remove the word ''applicants'' or ''applicant'' and add in its place the word ''proposers'' or ''proposer'' in the following places: § 295.7(a), (b) and (c); § 295.21 section heading; subpart C heading; and § 295.31 section heading.

[FR Doc. 97–32215 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 274

[Release Nos. 33–7478; IC–22920; File No. S7–19–97]

RIN 3235–AG73

Update of Registration Form to Reflect Fee Rate Change for Registration of Certain Investment Company Securities

AGENCY: Securities and Exchange Commission.

ACTION: Amendments to form.

SUMMARY: The Securities and Exchange Commission (''Commission'') is updating the fee rate information in the instructions to the form under the Investment Company Act of 1940 that prescribes the method by which certain investment companies calculate and pay registration fees on securities they issue (the form was last published at 62 FR 47941 (Sept. 12, 1997)). On November 28, 1997, legislation was enacted that sets a new fee rate of $295 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). Registration fees under this new rate are calculated by multiplying the aggregate offering or sales amount by .000295. This amendment updates the reference to the current fee rate in the instructions to the form.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Robin S. Gross, Staff Attorney, Office of Regulatory Policy at (202) 942–0690, or Carolyn A. Miller, Senior Financial Analyst, Office of Financial Analysis at (202) 942–0513, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is amending Instruction C.9 to Form 24F–2 [17 CFR 274.24] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'').

Form 24F–2 is the Form on which certain investment companies file an annual notice of securities sold pursuant to rule 24f–2 under the Investment Company Act [17 CFR 270.24f–2]. The Instruction to Item 5(vii) explains that the multiplier for calculation of the registration fee is determined by the Commission in accordance with section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)]. The Instruction informs filers of the multiplier that was in effect as of the date of the most recent printing of the Form, but indicates that this rate is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws.

On November 28, 1997, legislation was enacted that sets the fee rate at $295 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). Fees will be calculated by multiplying the aggregate offering or sales amount by .000295.

The Commission is amending the Instruction to Item 5(vii) of Form 24F–2 to reflect the change in the fee rate.

Statutory Authority

The Commission is amending Form 24F–2 pursuant to the authority set forth in sections 24 and 38(a) of the

Investment Company Act [15 U.S.C. 80a–24, –37(a)].

Text of Form Amendments

For the reasons set out in the preamble, Form 24F–2, referenced in § 274.24, Title 17, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

2. Form 24F–2 (referenced in § 274.24) is amended by revising the second and third sentences of Instruction C.9 to Item 5(vii) to read as follows:

Note: Form 24F–2 does not, and the amendments will not, appear in the *Code of Federal Regulations.*

Form 24F–2

Annual Notice of Securities Sold Pursuant to Rule 24f–2

* * * * *

Instructions

* * * * *

C. Computation of Registration Fee

* * * * *

9. Item 5(vii)—* * * As of November 28, 1997, the fee rate was $295 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). The registration fee is calculated by multiplying the aggregate offering or sales amount by .000295. * * *

* * * * *

For the Commission, by the Office of the Secretary, pursuant to delegated authority.

Dated: December 2, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31961 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–003 and RM94–7–004; Order No. 888–B]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

Issued November 25, 1997.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission affirms, with certain clarifications, the fundamental calls made in its order on rehearing of the final rule in this proceeding. The final rule directed public utilities to open their transmission lines to competitors and to offer them the same charges and conditions they apply to themselves. The rule also gave utilities an opportunity to seek recovery of certain stranded costs, i.e., costs that were prudently incurred to serve customers that use open access transmission under the final rule to shift to another power supplier. The Commission in this order clarifies its position on recovery of stranded costs in the case of municipalizations and municipal annexations, where customers previously served by a public utility become customers of a municipal utility instead.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT:

David D. Withnell (Legal Information—Docket No. RM95–8–003), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2063.

Deborah B. Leahy (Legal Information—Docket No. RM94–7–004), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2039.

Daniel T. Hedberg (Technical Information—Docket No. RM95–8–003), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0243.

Joseph M. Power (Technical Information—Docket No. RM94–7–004), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0243.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington, D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

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Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

I. Introduction

In this order, the Commission affirms, with certain clarifications, the fundamental calls made in Order No. 888–A. [1]

II. Public Reporting Burden

This order on rehearing issues a minor revision to Order Nos. 888 and 888–A.[2] We find, after reviewing this revision, that it does not increase or decrease the public reporting burden.

Order No. 888 contained an estimated annual public reporting burden based on the requirements of the Open Access Final Rule and the Stranded Cost Final Rule.[3] Using the burden estimate contained in Order No. 888 as a starting point, we evaluated the public burden estimate in light of the revision contained in this order and assessed whether the estimate needed revision. We have concluded, given the minor nature of the revision, that our estimate of the public reporting burden of this order on rehearing remains unchanged from our estimate of the public reporting burden contained in Order Nos. 888 and 888–A. The Commission has conducted an internal review of this conclusion and has assured itself that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by Order Nos. 888 and 888–A, as revised and clarified by this order on rehearing, and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in Order Nos. 888 and 888–A, for the collection, efficient management, and use of the required information.

Persons wishing to comment on the collections of information required by Order Nos. 888 and 888–A, as modified by this order on rehearing, should direct their comments to the Desk Officer for FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile: 202–395–7285. Comments must be filed with the Office of Management and Budget within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Michael Miller, 202–208–1415.

III. Background

In Order No. 888, the Commission required all public utilities that own, operate or control interstate transmission facilities to offer network and point-to-point transmission services (and ancillary services) to all eligible buyers and sellers in wholesale bulk power markets, and to take transmission service for their own uses under the same rates, terms and conditions offered to others. Order No. 888 required functional separation of the utilities' transmission and power marketing functions (also referred to as functional unbundling) and the adoption of an electric transmission system information network. To implement the requirements of comparable open access transmission, the Commission required all public utilities that own, operate or control interstate transmission facilities to file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory transmission service. In Order No. 888, the Commission established rules for discounting practices, provisions governing priority of service and curtailment, and a right of first refusal for all firm transmission customers. In addition, Order No. 888 conditioned the use of a public utility's open access service on the agreement that, in return, it is offered reciprocal service by non-public utilities that own or control transmission facilities.

With regard to stranded costs, Order No. 888 gives utilities the opportunity to seek to recover legitimate, prudent, and verifiable wholesale stranded costs associated with serving customers under wholesale requirements contracts executed on or before July 11, 1994 that do not contain explicit stranded cost provisions, and costs associated with serving retail-turned-wholesale customers. The opportunity to seek stranded costs is limited to situations in which there is a direct nexus between the availability and use of a Commission-required transmission tariff and the stranding of the costs. The Commission adopted a revenues lost approach for calculating a utility's stranded costs, and determined that stranded costs should be recovered from the customer that caused the costs to be incurred. The Commission decided in Order No. 888 to be the primary forum for addressing the recovery of stranded costs caused by retail-turned-wholesale customers, but not to be the primary forum in cases involving existing municipal utilities that annex retail customer service territories. Order No. 888 also clarified whether and when the

[1] As described further below, the Commission is making one revision to the pro forma open access transmission tariff. *See infra* Section IV.A.10.f and Appendix B. Because of this single revision and its minor nature, the Commission concludes that it would be administratively burdensome to require all public utilities with pro forma open access transmission tariffs on file with the Commission to submit compliance tariffs to reflect the revision. Accordingly, the Commission will amend all pro forma open access transmission tariffs currently on file with the Commission to incorporate the tariff revision and no tariff compliance filings will be necessary.

[2] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888-A, 62 FR 12274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997).

[3] 61 FR 21540, 21543; FERC Stats. & Regs. ¶ 31,036 at 31,638 (1996). In Order No. 888-A, the Commission concluded that its estimate of the public reporting burden in that order on rehearing remained unchanged from its estimate in Order No. 888. 62 FR 12274, 12280; FERC Stats. & Regs. ¶ 31,048 at 30,183 (1997).

Commission may address stranded costs caused by retail wheeling and the extent of the Commission's jurisdiction over unbundled retail transmission. The Commission determined that the only circumstance in which it will entertain requests for the recovery of stranded costs caused by unbundled retail wheeling is when the state regulatory authority does not have authority under state law to address stranded costs when the retail wheeling is required.

Order No. 888 further addressed the circumstances under which utilities and their wholesale customers may seek to modify contracts made under the old regulatory regime, taking into account the goals of reasonably accelerating customers' ability to benefit from competitively priced power and at the same time ensuring the financial stability of electric utilities during the transition to competition. The Commission determined that pre-existing contracts would continue to be honored until such time as they were revised or terminated. The Commission also found that those who were operating under pre-existing requirements contracts containing *Mobile-Sierra* clauses would nonetheless be allowed to seek reform of the contracts on a case-by-case basis, and that public utilities would be allowed to file to amend their *Mobile-Sierra* contracts for the limited purpose of providing an opportunity to seek recovery of stranded costs, without having to make a public interest showing that such cost recovery should be permitted.

In Order No. 888–A, the Commission reaffirmed its basic determinations in Order No. 888, with certain clarifications. For example, it revised the discounting requirements to better permit the ready identification of discriminatory discounting practices while also providing greater discount flexibility, and it clarified several aspects of the reciprocity condition. It also clarified that if utilities under *Mobile-Sierra* contracts seek to modify provisions that do not relate to stranded costs, they will have the burden of showing that the provisions are contrary to the public interest. In addition, the Commission reconsidered its decision in Order No. 888 not to be the primary forum for determining stranded cost recovery in cases involving municipal annexation and concluded that such cases should fall within the Commission's province.

In this order, the Commission affirms, with certain clarifications, the fundamental calls made in Order No. 888–A.

IV. Discussion

A. Open Access Issues

1. Discounting

A number of entities seek rehearing and/or clarification of the Commission's modified discounting policy that requires transmission providers to offer the same discount over all unconstrained paths to the same point of delivery.[4] Several of these entities assert that the Commission's modified policy encourages discriminatory behavior.[5] NRECA and TDU Systems argue that the Commission's policy opens the door to customer-by-customer discrimination (including discrimination by the transmission provider in favor of its native load customers) because it is likely that only one or a few customers would want transmission service to a particular delivery point. They also assert that the transmission provider unreasonably could discount service on a path where it has load, but decline discounts to another delivery point halfway along the same path.[6] They further contend that the Commission's new policy ''swings the pendulum too far in the direction of allowing price discrimination'' by the transmission monopolist. According to TDU Systems, the Commission's policy ''does not confine the transmission provider's incentive to give discounts for its own transmission uses to those instances, and only those instances, in which such discounts are economically justified.'' TDU Systems adds that ''the OASIS reporting will be inadequate to remedy discrimination in discounting short-term non-firm transmission, since the transactions will be over before complaints can even be filed.'' [7]

TAPS likewise asserts that ''[b]y allowing transmission providers to select the delivery points meriting a discount, the Commission is encouraging discriminatory behavior that it will be unable to remedy'' through an after-the-fact complaint proceeding.[8] It maintains that the Commission's approach ''makes it less likely that transmission providers will provide competitors non-firm transmission service at rates reflecting the lower quality of the service (if the Commission permits non-firm transmission rates to be capped at the firm rate).'' [9] It notes that TAPS members—

> have experienced withdrawal of discounts they have enjoyed under the Order No. 888 discounting policy and have seen evidence that the revised policy will be applied by transmission providers to offer discounts to each other, in the hope, expectation, or tacit agreement that they will be offered reciprocal discounts on the other transmission provider's system when requested, while a transmission dependent utility must always pay full freight. [10]

APPA asserts that the Commission properly required all discount negotiations to occur on the OASIS, but erroneously removed the requirement that affiliate discounts be offered for all service on unconstrained paths. It argues that the Commission ''has failed to balance its policy of ending discrimination in wholesale transmission services with the objective to send proper price signals to transmission providers and customers.'' [11] Under the Commission's modified approach, APPA believes that transmission providers can offer discounts on a very selective basis—''public utility transmission providers will have the ability to provide discounts to affiliates in ways that exclude smaller utilities, including municipal utilities, from receiving those same discounts.'' [12]

These entities propose several approaches to resolve the competitive problems they believe are associated with the Commission's modified approach to discounting. NRECA states that the Commission should revert to its Order No. 888 policy or require that discounts be offered on all unconstrained paths serving all similarly situated customers. NRECA and TDU Systems (which supports the second alternative) state that the alternative approach could be accomplished by requiring discounts on all unconstrained ''posted paths,'' or, if a discount is provided within a particular unconstrained area, the transmission provider should be required to offer the same discount on all unconstrained paths within the same area. Similarly, TAPS states that the Commission should revert to its Order No. 888 policy or, at a minimum, ''the discounts should be extended to all delivery points in the same unconstrained portion of the transmission provider's transmission

[4] Arizona, NRECA, TAPS, and TDU Systems. APPA also raises this issue, but APPA filed its request for rehearing out-of-time on April 4, 1997. APPA failed to file its rehearing request within the 30 day period required by the Federal Power Act. *See* 16 U.S.C. 825l(a). Accordingly, we will not accept the rehearing request for filing, but will accept the pleading as a motion for reconsideration.

[5] NRECA, TDU Systems, TAPS and APPA.

[6] *See also* TAPS.

[7] TDU Systems at 8–10.

[8] TAPS at 17.

[9] *Id.* at 18 (footnote omitted).

[10] *Id.*

[11] APPA at 17.

[12] *Id.* at 19.

system plus other similarly situated customers (from an operational/cost, rather than competitive, viewpoint).'' [13] Moreover, APPA states that the Commission should revert to Order No. 888 or, in the alternative, ''should require uniform discounts across interfaces and within control areas, or, at a minimum, within unconstrained zones.'' [14]

TAPS adds that the best way to promote efficient transmission usage and competitive bulk power markets is ''to set non-firm rates at the lowest reasonable rate, in accordance with the Commission's statutory mandate * * *. It is unreasonable to rely on discounting, especially delivery point-specific discounts, to ensure that customers are not charged firm rates for interruptible, low priority, non-firm service.'' [15] It requests that the Commission clarify that it will actively exercise its responsibility to ensure that customers are not overcharged for non-firm service.

Arizona, on the other hand, seeks to narrow the Commission's revised discounting policy. It requests that the Commission allow a transmission provider to offer varying degrees of discount depending upon whether—

(1) transactions over a particular path alleviate constraints on another transmission path, (2) certain transmission paths are loaded to a different degree than other paths, and (3) initial discounts encourage a sufficient number of transactions. [16]

For example, it asserts that ''there could be multiple paths to the same delivery point, with each path potentially warranting different discounting treatment. A steep discount may be appropriate on one unutilized transmission path to encourage counter-wheeling transactions that will alleviate constraints on another path into the delivery point, whereas a smaller discount (or no discount at all) may be appropriate on another unconstrained, but highly valued, path into the delivery point.'' [17]

With respect to its second point, Arizona asserts that a transmission path with relatively little available transmission capability (ATC) deserves a lower discount than a transmission path with relatively high ATC. It urges the Commission to clarify ''whether a transmission path that has an ATC equal to 80% of [total transmission capability (TTC)] should be discounted to the same degree as a transmission path that has an ATC equal to only 30% of TTC.'' [18] As to its third point, it seeks clarification that it ''may initially offer a steep discount on a transmission path into a particular delivery point to encourage transactions, but reduce the discount as more and more transactions take place over that path.'' [19]

American Electric Power System (AEP) responds to TAPS' assertion that transmission providers will only offer discounts to each other as evidenced by a printout from AEP's OASIS under which TAPS contends ''discounts are now available only to delivery points of other transmission providers, not those of TDUs.'' [20] AEP indicates that, contrary to TAPS' assertion, it offers discounts to any transmission customer that has alternatives to using AEP's transmission system. It notes that this is consistent with the Order No. 888–A statement that a transmission provider should discount only if necessary to increase throughput on its system. It also adds that no customer is being charged rates that exceed a just and reasonable, cost-based rate. According to AEP, ''[t]o charge customers without alternatives less than the cost-based rate would be unduly discriminatory to AEP's native load customers who would otherwise have to make up the revenues not recovered from such customers.'' [21] Moreover, because discounting must be conducted through the OASIS, AEP declares that there is no chance that a transmission provider will use discounting for any purpose other than to increase throughput. AEP also opposes TAPS' request to establish a price cap for non-firm service below that for firm service. It claims that such a change would allow customers on largely unconstrained transmission systems such as AEP's to game the system by requesting non-firm service priced at a low level with the knowledge that the service is essentially the equivalent of firm service.

Commission Conclusion. We deny the requests for rehearing of our discounting policy. In Order No. 888–A, we addressed certain concerns raised by various parties on rehearing regarding our prior discounting policy and adopted a more balanced approach that would provide incentives to transmission providers to operate the transmission grid efficiently while ensuring that they do so in a not unduly discriminatory manner.[22] Our balanced approach requires that (1) a transmission provider should discount only if necessary to increase throughput on its system, (2) any offer of a discount and the details of any agreed upon discount transaction must be posted on the OASIS (including any negotiation, *i.e.*, any offers and counteroffers, of the discount), and (3) a transmission provider must offer the same discount for the same time period on all unconstrained paths that go to the same point(s) of delivery.

We believe that this approach is a reasonable and workable means to permit transmission providers to provide discounts in a not unduly discriminatory manner. Transmission providers will not have unnecessary restrictions on their ability to increase throughput on their transmission systems, which accrues to the benefit of all of their firm customers, while OASIS will allow the Commission and other users of the system to monitor for instances of unduly discriminatory behavior by such transmission providers.[23]

In this regard, we also disagree that posting of discounts on OASIS is inadequate for short-term discounts because the transactions will be over before a complaint could be filed. All complaint proceedings occur after the fact, but we believe that such proceedings nevertheless act as a deterrent to improper behavior. The Commission will not be reluctant to impose appropriate sanctions in instances where transmission providers engage in unduly discriminatory discounting practices. Moreover, any alternative would likely require a preapproval process that could, as parties to this proceeding have argued, shut down a substantial portion of the hourly transactions in short-term markets that depend upon discounted transmission to go forward.

We see no need at this time to adopt a more restrictive discounting policy

[13] TAPS at 19.

[14] APPA at 20.

[15] TAPS at 20.

[16] Arizona at 4.

[17] *Id*. at 5 (footnote omitted).

[18] *Id*. at 6 n.12.

[19] *Id*. at 6 (footnote omitted).

[20] AEP at 3. On April 17, 1997, AEP filed an answer to the request for clarification and rehearing of TAPS. In the circumstances presented, we will accept the answer notwithstanding our general prohibition on allowing answer notwithstanding our general prohibition on allowing answers to rehearing requests. *See* 18 CFR 385.713(d).

[21] *Id*. at 4 (emphasis in original).

[22] FERC Stats. & Regs. ¶ 31,048 at 30,274–76.

[23] With respect to Arizona's request that a transmission provider be allowed to offer varying degrees of discount depending on the circumstances, we note that this Rule does not reach that level of specificity. A transmission provider is free to implement any discounting proposal which it believes can increase throughput without doing so in an unduly discriminatory manner, provided that the proposal offers the same discount for the same period to all eligible customers on all unconstrained paths that go to the same point(s) of delivery. However, if challenged on complaint, it should be prepared to defend its method. The only alternative is to require no discounting, an approach we reject as contrary to firm customers' interests and efficient grid use.

that could hinder a transmission provider's ability to increase throughput on its system based solely on allegations that the transmission provider may act in an unduly discriminatory manner. The opportunity to monitor the discounting behavior of transmission providers through OASIS will provide data that will allow the Commission to evaluate the adequacy and effectiveness of its discounting policy.[24] Until we see evidence that our discounting policy will not work or see patterns of unduly discriminatory discounting practices, we will continue the Order No. 888–A discounting policy, with the OASIS safeguards in place.

2. Reciprocity

Several entities raise a variety of issues with respect to the Commission's reciprocity condition. NRECA and TDU Systems request clarification that the amendment to section 6 of the pro forma tariff that deleted the words ''in interstate commerce'' was intended to affect only the reciprocity obligation of foreign transmission customers and not the reciprocity obligation of transmission customers located in the United States.[25] They seek clarification that transmission customers within the United States need provide reciprocal service only on facilities used for the transmission of electric energy in interstate commerce and not over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce.

Also with respect to section 6 of the pro forma tariff, NEPOOL takes issue with the additional language that provides that reciprocity applies 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.'' [26] It asserts that the breadth of this language could cause New Brunswick Power Corporation (New Brunswick), a Canadian utility that has engaged in economy and emergency transactions with NEPOOL and made unit sales to New England buyers, to cease or reduce sales in New England. According to NEPOOL, New Brunswick has indicated a concern that it does not have the legal authority to implement a generic open access tariff in New Brunswick. Thus, NEPOOL requests that the Commission provide that where a seller is simply continuing to make sales in the same manner as it did before Order Nos. 888 and 888–A, and is legally unable to provide reciprocity, the reciprocity requirement will not be applicable to it.[27]

TAPS takes issue with the Commission's modified ''safe harbor'' procedure set forth in Order No. 888–A that permits a non-public utility to provide reciprocal service only to the transmission provider from whom it receives open access transmission service. TAPS believes that the Commission's modification is ''an unnecessary step backwards from its expressed aim of remedying past undue discrimination and providing non-discriminatory open access.'' [28] It believes that the transmission provider's access to third party systems will be superior to that of its customers that support the transmission grid. According to TAPS, a customer would be at a disadvantage because it would be forced to resort to a filing under section 211. Thus, it asserts that the safe harbor should be available only to those that offer open access to all eligible wholesale transmission customers. ''At the very least, [it argues,] the special protections offered by the safe harbor should be available only if the non-jurisdictional utility makes its tariff available to the long term customers of the transmission provider.'' [29]

RUS seeks rehearing and/or clarification with respect to a number of reciprocity related issues. RUS first complains that there is confusion regarding the alternatives available to non-public utilities. It asserts that in certain places in Order No. 888–A the Commission indicates that it will no longer allow bilateral agreements (*e.g.*, ''Alternatively, bilateral agreements for transmission service provided by a public utility will not be permitted.''), but that in other places the Commission encourages the use of bilateral agreements (*e.g.*, ''A non-public utility may also satisfy reciprocity through bilateral agreements with a public utility.''). It also notes that Order No. 888–A appears to substitute public utility waivers for the alternative of bilateral agreements. In any event, however, it argues that

> [p]ublic utilities have no incentive to enter into bilateral agreements or to waive the reciprocity requirement for a non-public utility that owns transmission. Indeed, these so-called options effectively invite public utilities to deny access to non-public utilities that have not filed open access tariffs. If a non-public utility cannot qualify for a waiver from the Commission, the public utility can, by denying a waiver or refusing to enter into a bilateral agreement, force the non-public utility to file a reciprocal tariff with the Commission. Moreover, requiring a non-public utility to seek a waiver—whether from the public utility or the Commission—is inconsistent with the Commission's assertions that the provision of open access by non-public utilities is not required, but merely voluntary.[30]

RUS takes issue with the following statement in Order No. 888–A, claiming that it mischaracterizes the RUS program and RUS as anti-competitive:

> With respect to TDU System's assertion that reciprocal service should not have to be rendered if it would interfere with RUS loan financing, we note that we have already indicated that reciprocal service need not be provided if tax-exempt status would be jeopardized. If TDU Systems is arguing that we should not require reciprocal service if RUS attaches such a condition in its regulation of RUS-financed cooperatives, we reject such argument. Such cooperatives have the option to seek bilateral service agreements. [Order No. 888–A, mimeo at 318].

RUS maintains that it does not place any prohibitions, restrictions, or conditions on financing to electric systems based on rendering reciprocal service. It states that while the Rural Electrification Act places restrictions on RUS financing, it does not prohibit cooperatives from obtaining financing for facilities through non-RUS sources.

RUS seeks clarification that the statement in Order No. 888–A that ''the seller as well as the buyer in the chain of a transaction involving a non-public utility will have to comply with the reciprocity condition'' does not mean that if a G&T uses an open access tariff, both the G&T and its distribution system are subject to the reciprocity provision.

RUS also states that although the Commission acknowledges that it lacks jurisdiction to enforce rates charged by non-public utilities in reciprocal open access tariffs and to adjudicate stranded cost claims of non-public utilities, the Commission has indicated that if a non-public utility includes a stranded cost component in a reciprocity tariff, ''the Commission will review that stranded cost provision if a public utility claims that the stranded cost component, as applied, violates the principle of comparability.'' [31] According to RUS, ''any comparability determination with respect to stranded cost or other provisions contained in a non-public utility's open access tariff will involve the exercise of Commission jurisdiction over a non-public utility's open access

[24] As the market evolves, the Commission may need to take up a broad array of transmission pricing issues. It may well develop that a long-term solution to any problems raised by discounting requires fundamental changes to the transmission pricing methods currently in place in the electric industry.

[25] NRECA at 13–14; TDU Systems at 13–14.

[26] NEPOOL at 7.

[27] *Id.* at 7–8.

[28] TAPS at 22.

[29] *Id.* at 23 (footnote omitted).

[30] RUS at 10–11.

[31] *Id.* at 12.

transmission tariff as well as a determination of the legitimacy of the non-public utility's stranded cost claims.'' [32] RUS says that the Commission has not indicated that it will apply the comparability standard to the transmission rates that rural cooperatives charge members and non-members in a manner that will take into account the unique characteristics of a cooperative system, the inherent differences between members and non-members, and the intended beneficiaries of the RE Act.

Commission Conclusion. With respect to NRECA and TDU Systems' requested clarification of the deleted words ''in interstate commerce'' from section 6 of the pro forma tariff, we reiterate that transmission customers in the United States must provide reciprocal transmission service ''over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer.'' [33] Thus, a transmission customer must provide transmission service over *all transmission* facilities that it owns, controls or operates. This includes transmission facilities in both interstate and intrastate commerce. Such a customer, however, need not provide reciprocal service over facilities used solely in local distribution.

We recently addressed concerns similar to those raised by NEPOOL as to the applicability of the reciprocity condition to a Canadian utility selling power to a U.S. utility. In an order addressing Ontario Hydro's motion for a stay of the reciprocity provision of Order Nos. 888 and 888–A as those orders apply to transmission-owning foreign entities, we explained that the reciprocity condition does not apply

> in circumstances where a Canadian utility sells power to a U.S. utility located at the United States/Canada border, title to the electric power transfers to the U.S. border utility, and the power is then resold by the U.S. border utility to a U.S. customer that has no affiliation with, and no contractual or other tie to, the Canadian utility. The reciprocity provision thus does not in any way affect historical Canadian-United States buy-sell arrangements, *i.e.*, those involving sales to U.S. border utilities who then resell power to purchasers that have no contractual or other transactional link to the Canadian seller. For these types of historical sales, a Canadian seller is no worse off under Order Nos. 888 and 888–A than it was prior to the orders' issuance. Additionally, Order Nos. 888 and 888–A do not disrupt any pre-Order No. 888 power sales contracts under which Ontario Hydro sells to U.S. utilities, or any pre-Order No. 888 transmission contracts under which it purchases transmission from U.S. utilities.[34]

Thus, Order Nos. 888 and 888–A do not disrupt any existing agreements, as defined in those orders, between New Brunswick and any of its U.S. customers. Moreover, to the extent any of New Brunswick's transactions are buy-sell arrangements of the type described above, such transactions also are not affected by Order Nos. 888 and 888–A. However, if New Brunswick seeks to sell power under new agreements or through new coordination transactions, such transactions are subject to Order Nos. 888 and 888–A and New Brunswick would have to agree to provide reciprocal open access transmission, unless waived by the U.S. public utility or this Commission.

TAPS' rehearing request with respect to the safe harbor procedure was not timely filed. In Order No. 888, the Commission explicitly stated that ''we intend that reciprocal service be limited to the transmission provider.'' [35] The Commission also stated, in establishing the safe harbor procedure, that ''[w]e are aware that many non-public utilities are very willing to offer reciprocal access, and that some are willing to provide access to all eligible customers through an open access tariff.'' [36] Thus, it was clear that a non-public utility could meet reciprocity under the safe harbor procedure by agreeing to provide service only to the transmission provider or to any eligible customer. Nothing in Order No. 888–A changed this approach. The Commission's discussion of the safe harbor procedure in Order No. 888–A was limited to *Santee Cooper* [37]—a company-specific case decided subsequent to Order No. 888. The Commission noted that while the company in that case chose to offer an open access tariff to all eligible customers, ''Order No. 888 provides, as a condition of service, that reciprocal access be offered to only those transmission providers from whom the non-public utility obtains open-access service.'' [38]

We also disagree with TAPS' assertion that the Commission has taken ''an unnecessary step backwards from its expressed aim of remedying past undue discrimination and providing non-discriminatory open access.'' We explicitly stated in Order No. 888 our rationale for requiring that reciprocal access be offered only to the transmission provider from whom the non-public utility obtains open access service:

> We believe the reciprocity requirement strikes an appropriate balance by limiting its application to circumstances in which the non-public utility seeks to take advantage of open access on a public utility's system.[39]

With respect to RUS' concerns regarding the availability of bilateral agreements, we clarify the distinction between the two different circumstances: (1) That of a *non-public* utility seeking transmission service from a public utility, and the requirement imposed on the public utility in providing the service; and (2) that of a *public* utility seeking transmission from a non-public utility, and what is sufficient for the non-public utility to provide reciprocal transmission service. As we stated in Order No. 888–A, if a *non-public* utility seeks service from a public utility, that public utility should, except in unusual circumstances, provide the service ''pursuant to the open access tariff and not pursuant to separate bilateral agreements.'' [40] On the other hand, if a *public* utility seeks service from a non-public utility through the reciprocity condition, Order No. 888–A provides that the non-public utility may provide that service pursuant to a bilateral agreement to satisfy its reciprocity obligation.[41]

We do not agree with RUS that public utilities will have no incentive to take service under bilateral agreements or to waive the reciprocity condition for non-public utilities. If a public utility needs transmission service from a non-public utility to maximize its profits or to make sales or purchases on behalf of its native load, then it should not care whether it takes service from the non-public utility under a bilateral agreement or an open access tariff. However, we recognize that even if the public utility does not need transmission service from a non-public utility, it may use the reciprocity condition as a reason to deny transmission service. But this is no different from the situation non-public utilities were in prior to the issuance of Order No. 888 when utilities could outright deny any transmission service. In that situation, the only recourse for the non-public utility was to file a request for service under section 211. The same is true post-Order No. 888.[42]

[32] *Id.*

[33] *See* FERC Stats. & Regs. at 30,513.

[34] Order Clarifying Order No. 888 Reciprocity Condition and Requesting Additional Information, 79 FERC ¶ 61,182 at (1997) (footnotes omitted); *see also* Order Denying Motion for Stay, 79 FERC ¶ 61,367 (1997).

[35] FERC Stats. & Regs. at 31,760.

[36] *Id.* at 31,761.

[37] South Carolina Public Service Authority, 75 FERC ¶ 61,209 at 61,701 (1996).

[38] FERC Stats. & Regs. ¶ 31,048 at 30,289.

[39] FERC Stats. & Regs. ¶ 31,036 at 31,762.

[40] FERC Stats. & Regs. ¶ 31,048 at 30,285.

[41] *Id.* at 30,289.

[42] Of course, the flip side is equally true. If a public utility seeks service from a non-public

Continued

In any event, should a public utility refuse to provide transmission service based on a claim that the non-public utility requesting transmission service is not willing to provide reciprocal service, the non-public utility may always file a transmission tariff under the safe harbor procedure. We do not see this as any burden as the Commission has made available for interested entities a complete open access tariff that would require little modification to file.[43] Moreover, as we have explained, this reciprocal tariff, filed under the safe harbor procedure, need only be made available to the public utility (or utilities) from whom the non-public utility obtains open access transmission service. Further, if, as RUS seems to imply, the cooperatives do not want to provide *any* service, that is fundamentally at odds with the basic reciprocity provision and the fairness/competition concepts that underlie it.

We also reject RUS' argument that requiring a non-public utility to seek a waiver is inconsistent with the Commission's assertion that the reciprocity condition is voluntary. First, we did not require that non-public utilities seek a waiver, but merely provided a waiver as an option for them to pursue. Moreover, the waiver option (from the public utility or the Commission) is available only if a non-public utility *voluntarily* chooses to request open access transmission service from a public utility. As we explained in Order No. 888–A:

> we are not *requiring* non-public utilities to provide transmission access. Instead, we are conditioning the use of public utility open access tariffs, by all customers including non-public utilities, on an agreement to offer comparable (not unduly discriminatory) services in return.[44]

We will clarify for RUS that the Commission's statement that ''the seller as well as the buyer in the chain of a transaction involving a non-public utility will have to comply with the reciprocity condition'' does not apply to member distribution cooperatives when their G&T cooperative obtains open access transmission service. We did not intend this statement to change our position with respect to cooperatives and reaffirm our prior pronouncement that

> If a G&T cooperative seeks open access transmission service from the transmission provider, then only the G&T cooperative, and not its member distribution cooperatives, should be required to offer transmission service.[45]

Finally, we disagree with RUS' claim that ''any comparability determination with respect to stranded cost or other provisions contained in a non-public utility's open access tariff will involve the exercise of Commission jurisdiction over a non-public utility's open access transmission tariff as well as a determination of the legitimacy of the non-public utility's stranded cost claims.'' [46] In Order No. 888–A, the Commission explained that a non-public utility that chooses voluntarily to offer an open access tariff for purposes of demonstrating that it meets the reciprocity condition can include a stranded cost provision in its tariff, but adjudication of any stranded cost claims under that tariff would not be subject to our jurisdiction. We said that although we would not determine the rate of a non-public utility (including the stranded cost component of the rate), ''we would review a public utility's claim that it is entitled to deny service to a non-public utility because the stranded cost component of the non-public utility's transmission rate is being applied in a way that violates the principle of comparability.'' [47] In reviewing a public utility's claims that a non-public utility is applying its stranded cost provision in a non-comparable (or discriminatory) manner, we would not be exercising jurisdiction over the non-public utility or its rates. We simply would be enforcing the reciprocity condition. As we said in Order No. 888–A, ''[i]t would not be in the public interest to allow a non-public utility to take non-discriminatory transmission service from a public utility at the same time it refuses to provide comparable service to the public utility.'' [48]

3. Indemnification/Liability

Several petitioners argue that the Commission erroneously established a new standard of liability for transmission providers—simple negligence—that is contrary to the weight of authority in states across the country.[49] They claim that the Commission's standard would expose transmission providers and their native load customers to potentially enormous liability, including large consequential damage awards.[50] EEI also argues that the Commission has made no finding that a change in the standard is needed to remedy alleged undue discrimination nor, it argues, has the Commission demonstrated any reason to change the liability standard. According to EEI, the proper standard is ''gross negligence.''

Similarly, Puget argues that the Commission erroneously refuses to allow the express exclusion of consequential and indirect damages. It argues that the exception language in section 10.2 of the pro forma tariff (''except in cases of negligence or intentional wrongdoing by the Transmission Provider'') should be changed to ''except in cases of and to the extent of comparative or contributory negligence or intentional wrongdoing by the Transmission Provider.'' It further argues that Order No. 888 should be revised to exclude liability for special, incidental, consequential or indirect damages.

Coalition for Economic Competition states that the Commission erroneously relied upon a gas decision as a basis for adopting an ordinary negligence standard. It asserts that the characteristics of gas and electric service and the risks associated with each are very different: (1) the wires for electric transmission are located above ground and more susceptible to outages than buried pipelines and (2) the electric grid is more complex, with the potential for a single problem to affect a significant number of customers over a large geographic area. Thus, it argues, electric transmission providers face a much greater exposure to liability than gas transporters.

EEI and KCPL request that the Commission clarify whether states have authority to establish the scope of a utility's liability in providing federally mandated transmission service, as provided for in Order No. 888–A. Because of some uncertainty on this issue and the fact that 25 states do not have reported decisions on the issue, EEI indicates that there is likely to be significant litigation, which may lead to uncertainty between the parties to the

utility, the only way it may be able to seek such service is by filing a section 211 application.

[43] We note that since issuance of Order No. 888, ten non-public utilities have filed reciprocity tariffs, including cooperatives.

[44] FERC Stats. & Regs. ¶ 31,048 at 30,285 (emphasis in original).

[45] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,286. We note that this does not prevent an eligible entity from filing a section 211 request with a ''distribution'' cooperative.

[46] RUS at 12.

[47] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,364 n.527.

[48] *Id.* at 30,285.

[49] *See* KCPL and Coalition for Economic Competition. EEI also raises this issue, but EEI filed its request for rehearing out-of-time on April 4, 1997 with a request that the Commission accept the rehearing request because it has occurred at the very start of the proceeding, no response is required by any other party and there will be no prejudice to any other party. EEI failed to file its rehearing request within the 30 day period required by the Federal Power Act. *See* 16 U.S.C. 825l(a). Accordingly, we will not accept the rehearing request for filing, but will accept the pleading as a motion for reconsideration.

[50] *See* Coalition for Economic Competition, EEI.

interstate service transaction. If the Commission determines that states do not have authority, EEI and KCPL assert that the Commission should establish a rule of liability based on a standard of gross negligence. If the Commission determines that states do have the authority to establish the scope of a transmission provider's liability, EEI, as well as KCPL, assert that the Commission ''should clarify that states are preempted from attaching liability to actions taken by a transmission provider in compliance with the provisions of its filed pro forma tariff'' and ''should make an affirmative statement that it is expressing no opinion on whether a transmission provider should be liable, for public policy reasons, for acts of ordinary negligence.'' [51]

Coalition for Economic Competition further maintains that

> while the Commission directs transmission providers to rely on state law for protection against liability, it ignores the policies established at the state level which already address the issue. As a result, FERC is reallocating the risks associated with the transmission of electricity. To the extent that reallocation forces utilities to experience an additional financial burden, captive customers will be forced to pay more—more than the parties agreed would be their fair share. [52]

Furthermore, Coalition for Economic Competition states that case law may not protect the utility and its captive customers from the costs associated with the reallocation of risk:

> Frequently, the outcome of a case is closely related to any applicable tariff language that embodies that state's public policy as set by its regulatory commission. If the *pro forma* liability provision differs from the standards used in a particular state, the applicability and usefulness of that state's prior court decisions is unclear. [53]

Coalition for Economic Competition also asserts that the Commission appears to be sending contradictory signals, citing a recent decision (*New York State Electric & Gas Corporation*, 78 FERC ¶ 61,114 (1997)) in which the Commission rejected a provision in an open access tariff that acted as a choice of law provision. It argues that issues involving which jurisdiction provides the most appropriate forum, and which law should apply, are likely to be contested issues. In sum, Coalition for Economic Competition states that ''the Commission's reliance on state law leaves a wide open gap in which the outcome of potential claims is completely unknown, and the risk to which transmission providers are exposed is increased even more.'' [54]

Commission Conclusion. The tariff provisions on Force Majeure and Indemnification, as clarified in Order No. 888–A, provide certain limited protections to the transmission provider as well as its customers, when they faithfully attempt to carry out their duties under the tariff. The petitioners want the Commission to extend these limited protections to other situations or otherwise set forth definitive rules on liability in various situations that might arise under the tariff. We believe that the tariff provisions strike the right balance, and we will not here attempt to define the consequences of every conceivable breach that might occur under the tariff. Nor will we use the tariff, as some appear to want us to do, as an instrument for defining exclusive and preemptive federal laws for liability for all damages that might arise from the operation of the transmission system.

The Force Majeure provision of the tariff, in its essence, provides that neither the transmission provider nor the customer will be liable to the other when they behave in all respects properly, but unpredictable and uncontrollable force majeure events prevent compliance with the tariff. The Indemnification provision of the tariff, in its essence, provides that when the transmission provider behaves in all respects properly, the customer will indemnify the transmission provider from claims of damage to third parties arising from the service provided under the tariff. Under the terms of the tariff, the transmission provider may not rely on the protections provided by the Force Majeure clause or the Indemnification Clause for acts or omissions that are the product of negligence or intentional wrongdoing. Likewise, the customer may not rely on the protections provided by the Force Majeure clause for acts or omissions that are the product of negligence or intentional wrongdoing.

Contrary to the contention of EEI, the Force Majeure and Indemnification provisions do not establish a new simple negligence standard of liability for transmission providers. As we explained in Order No. 888–A, the issue of whether liability will attach to certain acts or omissions by a transmission provider is a different question from whether a customer should be obligated to indemnify the transmission provider in such circumstances.[55] In Order Nos. 888 and 888–A, the Commission has made no finding and expressed no opinion concerning whether a transmission provider should be held liable for damages to third parties arising from the transmission provider's acts or omissions of simple negligence, and the tariff language should not be construed as preempting the appropriate tribunal's consideration of whether liability should attach for acts or omissions of the transmission provider that injure third parties.

While the Commission has not established an exclusive and preemptive liability standard for electric utilities, EEI and the Coalition for Economic Competition would have us do so. They seek exculpatory language in the tariff that would protect the transmission provider from liability in all cases, except where gross negligence has been shown. Both acknowledge in their rehearing requests that such an exculpatory standard would in some regions alter the current liability standards, citing a study which concludes that 25 states have addressed the issue, with 21 of the 25 finding a gross negligence standard appropriate. Both argue that the Commission could eliminate potential uncertainties and conflicts among tribunals by determining a comprehensive and exclusive federal standard that accords with the determinations of the majority of states that have addressed this issue. EEI and KCP&L also question whether reference to state law is appropriate at all, suggesting that the Commission must develop a comprehensive federal standard of liability for service under the tariffs. We do not believe that such a determination is necessary or appropriate at this time.

First, we note that there is no question that the Commission has exclusive jurisdiction to determine the reasonableness of rates, terms, and conditions for the transmission of electric energy in interstate commerce.[56] Moreover, it is clear that state tribunals may not second-guess or collaterally attack Commission determinations of the reasonableness of filed rates, terms, and conditions.[57] On the other hand, it is likewise clear that the Commission's jurisdiction to consider disputes arising under jurisdictional tariffs does not as a matter of law preclude state courts from also entertaining such disputes in the

[51] EEI at 7; KCPL at 7–8.

[52] Coalition for Economic Competition at 7.

[53] *Id.* at 8.

[54] *Id.* at 9.

[55] FERC Stats. & Regs. ¶ 31,048 at 30,301.

[56] 16 U.S.C. 824b; *see, e.g.,* Nantahala Power & Light Company v. Thornburg, 476 U.S. 953, 963–66 (1986); FPC v. Southern California Edison Company, 376 U.S. 205 (1964); Public Utilities Commission v. Attleboro Steam & Electric Company, 273 U.S. 83 (1927).

[57] *See, e.g.,* Mississippi Power & Light Company v. Mississippi *ex rel* Moore, 487 U.S. 354, 374–75 (1988); Gulf States Utilities Company v. Alabama Power Company, 824 F.2d 1465, 1471–72, *amended,* 831 F.2d 557 (5th Cir. 1987).

appropriate circumstances.[58] In determining whether the Commission will exercise jurisdiction in such cases, the Commission is guided by the principles set forth in *Arkansas Louisiana Gas Company* v. *Hall*.[59] Application of these principles suggests the possibility that tribunals other than the Commission may be called upon to adjudicate disputes arising from service under the tariff.

With that background, the concerns expressed by EEI and KCP&L concerning the need for a uniform federal liability standard closely resemble the concerns addressed by the court in *United Gas Pipe Line Company* v. *FERC*.[60] In that case, the Commission had approved a tariff that limited a pipeline's liability to claims of ''negligence, bad faith, fault or wilful misconduct'' and the pipeline appealed, arguing that a uniform standard of liability should be established that was more protective of the pipeline. The court rejected the claim that there was a need for a uniform federal standard more favorable to the pipeline. As the court explained, ''uniformity of result is needed only to protect the federal interest, that is, only to exculpate [the pipeline] from contract liability in all cases not based on [the pipeline's] fault. Uniformity of exculpation beyond those cases is not a matter of federal concern'' because in such instances ''liability flows only from [the pipeline's] mismanagement.''[61] This same reasoning applies here. It is appropriate for the Commission to protect the transmission provider through the tariff provisions on Force Majeure and Indemnification from damages or liability that may occur when the transmission provider provides service without negligence, but to leave the determination of liability in other instances to other proceedings.[62]

4. Qualifying Facilities (QF)/Real Power Loss Service

NIMO and EEI[63] seek rehearing of the Commission's clarification in Order No. 888–A that a

> QF arrangement for the receipt of Real Power Loss Service or ancillary services from the transmission provider or a third party for the purpose of completing a transmission transaction is not a sale-for-resale of power by a QF transmission customer that would violate our QF rules.[64]

NIMO argues that the Commission's clarification is inconsistent with the criteria for QF status under sections 3(17) and 3(18) of the FPA and the Commission's precedent. NIMO argues that the Commission has decided that a QF can only sell the net output of its facility without losing QF status. According to NIMO, allowing QFs to purchase Real Power Loss Service will result in QFs selling in excess of their net output at avoided cost.[65]

Finally, NIMO argues that if the Commission wishes to allow QFs to purchase power to compensate for line losses from third parties, and to include such power in their sales, it must do so only after a rulemaking in which it has noticed its intention to amend its QF regulations.[66]

Commission Conclusion. As a preliminary matter, we reject NIMO's argument that the Commission could only grant the clarification provided in Order No. 888–A after a rulemaking in which it noticed its intent to amend its QF regulations. All of the QF cases cited by NIMO in its rehearing request involve the Commission clarifying its rules in case-specific situations. For example, in *Occidental Geothermal, Inc.* (*Occidental*), the Commission was required to define the term ''power production capacity'' of a facility as that term was used in 18 CFR 292.204(a).[67] The Commission did so without issuing a notice of proposed rulemaking and seeking comments.

Moreover, the issue raised by NIMO and EEI is whether the Commission's clarification would result in a facility losing QF status, as defined in sections 3(17) and 3(18) of the FPA. The Conference Report on PURPA provides:

> The new paragraphs 17(C) and 18(B) of the definitions provide that the Commission shall determine, by rule, *on a case-by-case basis, or otherwise,* that a small power production facility or a cogeneration facility is a qualifying small power production facility or cogeneration facility, as the case may be.[68]

Accordingly, NIMO's argument that the Commission has improperly amended its PURPA regulations is wrong.

The substantive issue raised on rehearing is an issue of first impression.[69] In *Occidental, Turners Falls,* as well as in *Power Developers, Inc.*,[70] *Malacha Power Project, Inc.* (*Malacha*),[71] and *Pentech Papers, Inc.*,[72] the Commission found that QFs were permitted to sell only the net output of their power production facilities as measured at the point of interconnection with the electric utility to which they were interconnected. The Commission did not decide the question of whether ''the receipt of Real Power Loss Service or ancillary services from the transmission provider or a third party for the purpose of completing a transmission transaction'' would be a sale-for-resale of power by a QF that would violate the Commission's QF rules.

At first glance, it would appear that Real Power Loss Service and ancillary services fall within the definition of ''supplementary power'' as defined in 18 CFR 292.101(b)(8).[73] If this were in fact the case, the precedent cited above would be relevant because supplementary power would be subtracted from gross output to determine the net output available for sale and, pursuant to *Turner Falls,* any sale in excess of the net output would result in a loss of QF status. However, if Real Power Loss Service and ancillary services are part of the costs of transmission, they are not covered

[58] *See, e.g.,* Pan American Petroleum Corporation v. Superior Court of Delaware, 366 U.S. 656, 662, 666 (1961).

[59] 7 FERC ¶ 61,175, *reh'g denied,* 8 FERC ¶ 61,031 (1979).

[60] 824 F.2d 417 (5th Cir. 1987).

[61] 824 F.2d 427.

[62] Some of the rehearing requests concerning indemnification/liability raise issues that previously were raised on rehearing of Order No. 888 and were addressed by the Commission in Order No. 888–A. *See* Coalition for Economic Competition argument that the circumstances of electric transmission require a different result than the gas pipeline cases and Puget arguments that the negligence language of the indemnification provision should be changed to reference comparative or contributory negligence and that the tariff should exclude transmission provider liability for special, incidental, consequential, or indirect damages. The Commission will not further address such issues in this proceeding.

[63] As discussed above, EEI filed its request for rehearing out-of-time. Accordingly, we are treating EEI's pleading as a motion for reconsideration.

[64] FERC Stats. & Regs. ¶ 31,048 at 30,237 (1997). *See also* Puget.

[65] On April 21, 1997, Granite State Hydropower Association filed an answer to NIMO's rehearing request arguing that gross sales are permissible for QFs. In the circumstances presented, we will accept the answer notwithstanding our general prohibition on allowing answers to rehearing requests. *See* 18 CFR 385.713(d).

[66] EEI supports NIMO's arguments.

[67] 17 FERC ¶61,231 (1981).

[68] H.R. Rep. No. 95–1750, Public Utility Regulatory Policies Act, 95th Cong. 2d Sess. 89 (1978) (emphasis added). *See also* Turners Falls Limited Partnership, 55 FERC ¶61,487 at 62,670 n.33 (1991) (*Turners Falls*).

[69] We note that other aspects of the ''net/gross'' issue are pending before the Commission in separate proceedings and will be addressed by the Commission in subsequent orders. *See* Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., *et al.* (Docket Nos. EL94–10–000 and QF86–177–001); Carolina Power & Light Company v. Stone Container Corporation (Docket Nos. EL94–62–000 and QF85–102–005); and Niagara Mohawk Power Company v. Penntech Papers, Inc. (Docket Nos. EL96–1–000 and QF86–722–003).

[70] 32 FERC ¶61,101 (1985).

[71] 41 FERC ¶61,350 (1987).

[72] 48 FERC ¶61,120 (1989).

[73] Supplementary power is defined as ''electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.''

under the definition of ''supplementary power.''

As the Commission explained in its Notice of Proposed Rulemaking, Small Power Production and Cogeneration-Rates and Exemptions:

> The costs of transmission are not a part of the rate which an electric utility to which energy is transmitted is obligated to pay the qualifying facility. These costs are part of the costs of interconnection, and are the responsibility of the qualifying facility * * *. The electric utility to which the electric energy is transmitted has the obligation to purchase the energy at a rate which reflects the costs that it can avoid as a result of making such a purchase.[74]

This view was adopted by the Commission in Order No. 69, Small Power Production and Cogeneration Facilities, Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978.[75] There the Commission defined '''interconnection costs' as the reasonable costs of * * * transmission * * *.''[76] It is also consistent with the Commission's findings in 18 CFR 292.303(d) that if a QF transmits its output to an electric utility with which it is not interconnected, the rate for the purchase of such energy ''shall not include any charges for transmission.'' Thus, all that remains is to determine whether Real Power Loss Service and ancillary services are part of the costs of transmission.

Ancillary services as defined in Order Nos. 888 and 888-A are part of the costs of transmission services. In Order No. 888, we defined ancillary services as those services ''that must be offered with basic transmission service under an open access transmission tariff.''[77] We noted that these services are those ''needed to accomplish transmission service while maintaining reliability within and among control areas affected by the transmission service.''[78] Thus, there is no question that ancillary services are part of the cost of transmission and therefore are included among the interconnection costs a QF is responsible for.

Real Power Loss Service is an interconnected operations service.[79] It is thus not a service which a transmission provider is *required* to provide under its open access transmission tariff. Nevertheless, the Commission recognized that a transmission customer must make provisions for Real Power Loss. As the Commission noted, a customer ''cannot take basic transmission service without such a provision.''[80] As a result, we find that Real Power Loss Service is also a part of the cost of transmission and included among the interconnection costs a QF is responsible for.

Consistent with 18 CFR 292.303(d), however, a QF purchasing Real Power Loss Service shall have its purchase rate adjusted up or down consistent with 18 CFR 292.304(e)(4).[81] In other words, while a QF can never sell more power than its net output at its point of interconnection with the grid, its location in relation to its purchaser (and thus its losses) may be relevant in the calculation of the avoided cost which it is entitled for the power it does deliver to its electric utility purchaser. However, as explained above, the receipt of Real Power Loss Service or ancillary services is not a sale-for-resale of power. Rather, they are part of the costs of transmission which the QF must bear, in the absence of an agreement to share such costs with the transmitting utility.

5. Right Of First Refusal/Reservation Of Transmission Capacity

NRECA, TDU Systems and TAPS seek clarification that the rights of network customers to reserve capacity to serve their own retail load are comparable to a transmission provider's right to reserve transmission capacity for its retail native load. They point to language in Order No. 888–A that supports their interpretation, but note that other language concerning the Right of First Refusal (ROFR) mechanism seems to provide an advantage to transmission providers in serving their retail native load.

NRECA and TDU Systems argue that the Commission improperly allows a transmission provider to reserve capacity as needed to serve its existing native load customers, but the cooperative wholesale power or firm transmission customer has only a right of first refusal that requires it to match competing bids, which exposes it to matching an incremental rate or opportunity cost rate capped at the cost of system expansion. They assert that ''[t]o the extent the transmission provider is able to continue to provide service to its retail native load at average embedded transmission costs, so too should the network customer have the right to continued service at average embedded-cost rates, rather than at incremental-cost rates or opportunity-cost rates capped only at the cost of system expansion.''[82] TDU Systems requests that the Commission clarify that

> the ROFR provisions allow an existing network customer to continue to reserve transmission capacity at rates that remain comparable to the transmission provider's service to its retail native load.[83]

Similarly, NRECA requests the Commission to clarify that

> firm transmission customers for which the transmission provider has a planning requirement are on an equal footing with the transmission provider's retail load in reserving transmission capacity. The Commission accordingly should clarify that the ROFR provisions allow existing firm transmission customers for which the transmission provider has a planning requirement to continue to reserve their existing transmission capacity at rates that remain comparable to the transmission provider's existing service to its retail native load.[84]

TAPS asks the Commission to clarify that

> its discussion of the rights of a transmission provider to reserve and reclaim capacity needed for native load growth apply with equal force to capacity needed for network customers for which the transmission provider is equally responsible for planning its system. The Commission should also clarify that the transmission provider's reclamation/reservation right cannot be used to withdraw capacity currently or reasonably forecasted to be used by a network customer.[85]

TDU Systems further requests that the Commission clarify the rate an existing transmission customer would have to match to retain its reservation priority. It requests that the Commission clarify that the customer need match only the undiscounted tariff rate of general applicability and not the highest rate the transmission provider is then collecting

[74] FERC Stats. & Regs., Proposed Regulations 1977–1981, ¶32,039 at 32,437 (1979). *See also id.* at 32,447 (costs of transmission constitute interconnection costs and must be borne by QF unless transmitting utility agrees to share them).

[75] FERC Stats. & Regs., Regulations Preambles 1977–1981, ¶30,128 (1980).

[76] *Id.* at 30,866. *See also* 18 CFR 292.101(b)(7).

[77] FERC Stats. & Regs., ¶31,036 at 31,705 (footnote omitted).

[78] *Id.*

[79] *Id.* at 31,709.

[80] *Id.*

[81] In Order No. 69, the Commission noted:

> Subparagraph (4) addresses the costs or savings resulting from line losses. An appropriate rate for purchases from a qualifying facility should reflect the cost savings actually accruing to the electric utility. If energy produced from a qualifying facility undergoes line losses such that the delivered power is not equivalent to the power that would have been delivered from the source of power it replaces, then the qualifying facility should not be reimbursed for the difference in losses. If the load served by the qualifying facility is closer to the qualifying facility than it is to the utility, it is possible that there may be net savings resulting from reduced line losses. In such cases, the rates should be adjusted upwards.

Order No. 69 at 30,885–86.

[82] TDU Systems at 6; NRECA at 5.

[83] TDU Systems at 7.

[84] NRECA at 7.

[85] TAPS at 33.

from any customer, *i.e.*, an incremental rate based on an upgrade for a particular customer.

Commission Conclusion. In Order No. 888–A, we addressed concerns raised by transmission providers that the right of first refusal may prohibit them from recalling capacity needed for native load growth, by clarifying that the transmission provider may reserve existing capacity for retail native load growth. While the Commission's conclusion in Order No. 888–A, in the context of the treatment of retail native load, is correct, a transmission provider may also reserve existing capacity for both its own wholesale native load growth and network customers' load growth. As the Commission originally explained in Order No. 888:

> public utilities may reserve existing transmission capacity needed for native load growth *and network transmission customer load growth* reasonably forecasted within the utility's current planning horizon.[86]

Accordingly, in order to allay the concerns of NRECA, TDU Systems and TAPS, we clarify that network transmission customers are afforded the same treatment as the transmission provider on behalf of native load (retail and wholesale requirements customers) in terms of the reservation of existing transmission capacity by the transmission provider.

Regarding NRECA's and TDU Systems' allegation that a transmission provider's right to reserve existing transmission capacity for its retail native load is superior to a firm transmission customer's right of first refusal, we note that it is not clear if NRECA and TDU Systems' argument pertains to network transmission customers or to point-to-point transmission customers. The right of a transmission provider to reserve existing transmission capacity on behalf of network transmission customers is discussed above. The reservation priority of transmission capacity for point-to-point transmission customers is different because point-to-point transmission customers do not undertake the same payment obligation as either network transmission customers or the transmission provider on behalf of native load customers. As the Commission explained in Order No. 888–A in the context of reservation of existing capacity:

> We note that network service is founded on the notion that the transmission provider has a duty to plan and construct the transmission system to meet the present and future needs of its native load and, by comparability, its third-party network customers. In return, the native load and third-party network customers must pay all of the system's fixed costs that are not covered by the proceeds of point-to-point service. This means that native load and third-party network customers bear ultimate responsibility for the costs of both the capacity that they use and any capacity that is not reserved by point-to-point customers. In this regard, native load and third-party network customers face a payment risk that point-to-point customers generally do not face.[87]

Additionally, we note that a firm transmission customer may always elect to take network transmission service in lieu of point-to-point transmission service, thereby obtaining rights to reserve existing transmission capacity that are comparable to the rights of other network customers and the transmission provider on behalf of native load.

Furthermore, unless prohibited by the terms of the existing transmission customer's contract, there is nothing to prevent an existing point-to-point transmission customer from seeking to extend the term of its contract. An existing transmission customer may also enter into an additional agreement for point-to-point transmission service and reassign such capacity until needed or choose a service commencement date concurrent with the termination of its existing contract.

TDU Systems asserts that Order No. 888–A ''leaves unresolved whether the customer must pay the undiscounted rate of general applicability for tariff service at the time of conversion or the highest rate the transmission provider is then collecting from any customer,'' such as an incremental cost-based rate.[88] We clarify that the right of first refusal does not require an existing transmission customer to match the highest rate the transmission provider is then collecting from *any* customer. The highest rate collected from *any* customer may involve a different service than that service received by the existing customer, which may result in an inappropriate comparison. In this regard, the Commission stated in Order No. 888–A that the purpose of the right of first refusal is to be a tie-breaker and, therefore, the competing requests should be substantially the same in all respects.[89] Accordingly, we clarify that the existing transmission customer exercising its right of first refusal will be required to match the term of service requested by another potential customer and may be required to pay the transmission provider's maximum filed transmission rate. However, the rate must be for substantially similar service of equal or greater duration.

TDU Systems also asks whether the maximum rate that a customer must match in exercising its right of first refusal would include an incremental cost-based rate for an upgrade to a competing customer or if the customer is required to match only the undiscounted tariff rate of general applicability. The right of first refusal is predicated on an existing customer continuing to use its transmission rights in the *existing* transmission system. The right of first refusal acts as a tiebreaker to determine whether the competing eligible customer or the existing transmission customer gets the existing transmission capacity. Accordingly, the maximum rate for such *existing* transmission capacity would be the just and reasonable transmission rate on file at the time the customer exercises its right of first refusal.[90]

In conclusion, we believe that we have struck an appropriate balance between our goals of: (1) Protecting the rights of retail and wholesale native loads and network customers by allowing the transmission provider to reserve existing transmission capacity for their projected load growth and (2) providing existing firm transmission customers with a priority over new requests for firm transmission service to continue receiving transmission service from existing transmission capacity when there is insufficient existing capacity available to accommodate all requests for transmission service.

6. Energy Imbalance Service

a. Appropriate bandwidth for small utilities. APPA argues that the Commission's revision in Order No. 888–A to the deviation bandwidth did not go far enough and does not address the requirements of *all* small utilities, *i.e.*, utilities that sell no more than 4 million MWh annually.[91] It asserts that the Commission has adequately remedied the problem for those small utilities serving load with a peak demand of less than 20 MW, but not for those utilities serving loads with greater peak demands.

To remedy the problem, APPA asks the Commission to revise the minimum

[86] FERC Stats. & Regs. ¶ 31,036 at 31,694 (emphasis added).

[87] FERC Stats. & Regs. ¶ 31,048 at 30,220.

[88] TDU Systems at 8.

[89] FERC Stats. & Regs. ¶ 31,048 at 30,197.

[90] Depending on the rate design on file for the existing capacity, a customer exercising its right of first refusal could face an average embedded cost-based rate, an incremental cost-based rate, a flow-based rate, a zonal rate, or any other rate design that the Commission may have approved under section 205 of the FPA.

[91] APPA at 21–23 (citing Blue Creek Hydro, Inc., 77 FERC ¶ 61,232 at 61,941 (1996), in which the Commission used the 4 million Mwh level for determining small utilities eligible for waiver of the requirements of Order No. 889).

bandwidth to provide a minimum deviation bandwidth of 2 MW for utilities serving load with a peak demand of less than 20 MW, 5 MW for utilities serving load less than 100 MW, and 7.5 MW for all other small utilities.

Commission Conclusion. We deny APPA's motion for reconsideration.[92] As the Commission explained in Order No. 888–A, the deviation bandwidth was developed ''to promote good scheduling practices by transmission customers. It is important that the implementation of each scheduled transaction not overly burden others.'' [93] The Commission reaffirmed its use of the 1.5 percent energy imbalance bandwidth as ''consistent with what the industry has been using as a standard and is as close to an industry standard as anyone can set at this time.'' [94] However, the Commission recognized the needs of small customers and raised the minimum energy imbalance from one megawatthour per hour to two megawatthours per hour. In doing so, the Commission sought to balance its primary goal of promoting good scheduling practices with its commitment to provide as much relief as possible to small customers. Larger minimum deviation bandwidths, as proposed by APPA, could only unnecessarily jeopardize this balance at the expense of good scheduling practices.

Moreover, in Order No. 888–A, the Commission provided all customers, including small customers, further options to deal with any difficulties that may be experienced as the result of the minimum deviation bandwidth set forth in Order No. 888–A:

> To help customers with the difficulty of forecasting loads far in advance of the hour, the Final Rule pro forma tariff permits schedule changes up to twenty minutes before the hour at no charge. By updating its schedule before the hour begins, a transmission customer should be able to reduce or avoid energy imbalance and associated charges. However, we will allow the transmitting utility and the customer to negotiate and file another bandwidth more flexible to the customer, subject to a requirement that the same bandwidth be made available on a not unduly discriminatory basis.[95]

APPA has simply not shown that the minimum deviation or the procedures to reduce or avoid energy imbalance charges or to negotiate another bandwidth do not provide adequate relief for small customers. Nor has APPA shown that larger bandwidths could be implemented without unduly undermining good scheduling practices.

b. Settlements establishing a deviation bandwidth or minimum imbalance. TDU Systems states that Order No. 888–A allows a transmission provider and a customer to negotiate and file another bandwidth more flexible to the customer on a not unduly discriminatory basis, but if a settlement was approved subject to the outcome of Order No. 888, it must be revised in the subsequent compliance filing to reflect the language in the pro forma tariff. Accordingly, TDU Systems seeks clarification that if such a settlement contains a bandwidth above 1.5% or a minimum imbalance above 2 MW, those amounts need not be revised downward to conform to the pro forma tariff.[96]

Commission Conclusion. We will not grant the clarification sought by TDU Systems. In Order No. 888–A, we explicitly stated that

> service provided pursuant to a settlement that was expressly approved subject to the outcome of Order No. 888 on non-rate terms and conditions must be revised in the subsequent compliance filing to reflect the language contained in the pro forma tariff.[97]

This is consistent with our desire to have all public utilities at the same starting line as open access is implemented in the electric industry:

> By initially requiring a standardized tariff, we intend to foster broad access across multiple systems under standardized terms and conditions.[98]

However, as we also recognized, ''public utilities are free to file under section 205 to revise the tariffs (*e.g.*, to reflect various settlement provisions) and customers are free to pursue changes under section 206.'' [99] Thus, the settlement discussed by TDU Systems must be revised to conform to the pro forma tariff, but the public utility transmission provider to the settlement may then make another filing with the Commission to seek a change to the bandwidth contained in the pro forma tariff.

7. Transmission Provider ''Taking Service'' Under Its Tariff for Power Purchased on Behalf of Bundled Retail Customers

a. Jurisdiction. IL Com states that the Commission agreed with IL Com's jurisdictional arguments on rehearing of Order No. 888 and made the following appropriate clarifications in Order No. 888–A:

> In a situation in which a transmission provider purchases power on behalf of its retail native load customers, the Commission [FERC] *does not have* jurisdiction over the transmission of the purchased power to the bundled retail customers insofar as the transmission takes place over such transmission provider's facilities. [quoting Order No. 888–A at 117–18 (emphasis added)].
>
> * * * * *
>
> [The Commission] *does have* jurisdiction over transmission service associated with sales to any person for resale, and such transmission must be taken under the transmission provider's pro forma tariff. [quoting Order No. 888–A at 118 (emphasis added)].[100]

However, IL Com argues that the Commission

> nevertheless neglected to revise § 35.28(c)(2) and § 35.28(c)(2)(i) to incorporate these clarifications into the Rule. Therefore, [IL Com] reiterates its request that the words ''for sale for resale'' be inserted into the Rule after the word ''purchases'' in § 35.28(c)(2) and ''purchase'' in § 35.28(c)(2)(i) to codify the Order 888–A clarification concerning the extent of required power purchase unbundling.[101]

CCEM, however, argues that the Commission's disclaimer of jurisdiction over the transmission in interstate commerce of purchased power headed for retail customers is contrary to the FPA's assertion of jurisdiction over all transmission of electric energy in interstate commerce.[102] It states that

> [t]he Commission has already embraced the proposition that it has the statutory authority and mandate to require utilities to adopt tariffs that will ensure all market participants comparable access to transmission services. It must now extend that authority and mandate to apply to all transmission service.[103]

CCEM further argues that the Commission's failure to assert jurisdiction over interstate transmission of purchased power to retail customers is contrary to precedent under the Natural Gas Act (NGA).[104] It cites to *Mississippi River Transmission Corp.* v. *FERC*, 969 F.2d 1215 (D.C. Cir. 1992), stating that the court affirmed the Commission's interpretation of NGA section 1(b) as authorizing the Commission to regulate the price of natural gas transportation service that

[92] As discussed above, APPA filed its request for rehearing out-of-time. Accordingly, we are treating APPA's pleading as a motion for reconsideration.

[93] FERC Stats. & Regs. ¶ 31,048 at 30,232.

[94] *Id.* at 30,232.

[95] *Id.*

[96] TDU Systems at 12–13.

[97] FERC Stats. & Regs. ¶ 31,048 at 30,233.

[98] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,734.

[99] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,234 (footnote omitted).

[100] IL Com at 8.

[101] *Id.* at 8–9.

[102] CCEM at 2–6.

[103] *Id.* at 4.

[104] *Id.* at 4–6 (citing Mississippi River Transmission Corp. v. FERC, 969 F.2d 1215 (D.C. Cir. 1992)).

MRT provided in support of certain firm direct sales.

If the Commission does not grant rehearing as requested by CCEM, CCEM argues that ''the Commission should nevertheless clarify that its jurisdictional disclaimer does not extend to power pool transmission services.'' [105] It asserts that because pools themselves do not have native load and do not purchase power on behalf of native load, ''when a public utility takes poolwide service to transmit purchased power, it should be required to take that service on an unbundled basis pursuant to the power pool's open-access tariff.'' [106] In this regard, it states that it is ''aware that certain public utilities claim that the Commission's disclaimer of jurisdiction extends to their uses of poolwide transmission service to transmit purchased power to their captive, native loads.'' [107]

CCEM further argues that the Commission's failure to require that all transmission service be taken under an open access tariff is arbitrary and irreconcilable with the Commission's concurrent determination in connection with the rules pertaining to stranded cost recovery that it has jurisdiction over the rates, terms and conditions of unbundled interstate transmission services by public utilities to retail customers, and that it has the authority to address retail stranded costs through its jurisdiction over such services. It adds that experience from restructuring the natural gas industry (Order Nos. 436 and 636) shows the need to unbundle and separately regulate transmission provided in connection with retail service.

Commission Conclusion. CCEM's arguments with respect to the Commission's disclaimer of jurisdiction over bundled retail transmission are the same arguments it raised on rehearing of Order No. 888 (and were addressed by the Commission) [108] or should have raised on rehearing of Order No. 888. We will not accept CCEM's invitation to further address this issue.

In response to CCEM's request for clarification regarding power pool transactions, we note that all power pool transactions must be taken under the terms of the pool-wide pro forma tariffs that were filed on compliance to Order No. 888.[109] The appropriateness of the terms and conditions contained in those pool-wide pro forma tariffs will be addressed on a case-by-case basis when the Commission addresses the merits of the various pools' compliance filings.

Finally, we deny IL Com's request to modify sections 35.28(c)(2) and 35.28(c)(2)(i) of the Commission's regulations. The additional language proposed by IL Com simply will not work. As we describe in more detail in section 7.b below, it is not possible, as a practical matter, to divide a single power purchase made on behalf of both wholesale and retail native load such that the transmission provider takes service under the terms and conditions of the pro forma open access transmission tariff for the wholesale part of the purchase and under the terms and conditions of a different tariff for the retail part. Thus, the entire purchase transaction must be undertaken pursuant to the terms and conditions of the pro forma open access transmission tariff. The language proposed by IL Com does not recognize the indivisible nature of single power purchases made on behalf of both wholesale and retail native load.

b. Purchases for retail native load. TAPS argues that the Commission significantly contracts its functional unbundling requirement and the associated Standards of Conduct ''by exempting from functional unbundling all use by a transmitting utility of its own transmission system to serve bundled retail native load.'' [110] By exempting a key aspect of the transmission provider's activities in wholesale markets from the open access rules, TAPS asserts, comparability is destroyed and the market is severely distorted. It emphasizes that

> because of the interdependence, elasticity and fungibility of purchases on behalf of unbundled retail load with the transmission provider's other wholesale marketing activities, there is little, if anything, left of functional unbundling.[111]

TAPS states that Order No. 888–A leaves unclear issues critical to comparability, ''such as request procedures and priority for usage of limited interface capability applicable to the transmission provider's use of transmission for economy imports for retail bundled load.'' [112] It argues that without clearly established rules that put the transmission provider in the same position as network customers, the transmission provider will have a competitive advantage.

TAPS further argues that the Commission's approach defeats the Commission's Standards of Conduct and allows transmission provider employees involved in the transmission function to ''share operational and reliability information with employees engaged in making economic and other purchases for retail bundled load on a preferential basis as compared with other transmission customers or the transmission provider's 'wholesale' merchant function.'' [113] Further, it asserts that the Commission's approach to functional unbundling will encourage a transmission provider to retain its preferential access to transmission service and information and discourage it from joining an ISO, under which it would lose its preferential treatment.

TAPS concludes by arguing that ''[c]ontrary to the Commission's suggestion, constriction of functional unbundling is not required by limitations on the Commission's jurisdiction.'' [114] It asserts that the Commission has provided no support for its position and adds that the Commission's position cannot be reconciled with its treatment of transmission agreements between jurisdictional and non-jurisdictional entities whereby the Commission stated that its authority over a jurisdictional contract involving a public utility cannot be impaired by virtue of the fact that the other party is non-jurisdictional.

Commission Conclusion. While we have reiterated our view that the Commission does not have jurisdiction over the rates, terms and conditions of *bundled* retail service, based on the comments received on rehearing, we believe certain clarifications need to be made. As a practical matter, we do not believe that it is possible to divide a *single* power purchase made on behalf of both wholesale and retail native load such that the transmission provider takes service under the open access non-rate terms and conditions for the part of the purchase that goes to wholesale native load, but takes service under different terms and conditions for the part of the purchase that goes to retail native load. Because the power purchase transaction (including the delivery across the transmission provider's system to both wholesale and retail customers) is indivisible, and because the transmission of the purchased power to the wholesale native load customer must be done

[105] *Id. at 6.*

[106] *Id.*

[107] *Id.*

[108] FERC Stats. & Regs. ¶ 31,048 at 30,225–26.

[109] *See* MidContinent Area Power Pool, et al., 78 FERC ¶ 61,203 (1997) (Order Accepting for Filing and Suspending Proposed Pool-Wide and Single-System Holding Company Open Access Transmission Tariffs and Revised Tariffs, and Deferring Further Action), *reh'g pending.*

[110] TAPS at 4 and 6–14.

[111] *Id.* at 5.

[112] *Id.* at 9.

[113] *Id.* at 10–11.

[114] *Id.* at 14.

pursuant to the open access tariff, this means that the entire transaction *de facto* must be pursuant to the non-rate terms and conditions of the tariff.

Concerning the Standards of Conduct requirement that public utilities separate their *wholesale* power marketing functions from their transmission operations, the Commission did not require separation of the *retail* power marketing function because the state has jurisdiction over retail power marketing and over bundled retail transmission. However, here too we believe further clarification is necessary. First, the public utility has no choice pursuant to Order Nos. 888 and 888–A but to separate its wholesale power marketing function (including power purchase transactions made by the marketing function on behalf of wholesale native load) from the transmission operations function. This means that those persons in the company that are involved in wholesale power purchases as well as wholesale sales cannot interact with the transmission personnel other than through the OASIS. Thus, to the extent they are making purchases on behalf of wholesale as well as bundled retail native load as part of a single purchase, they will have to abide by the separation of function requirement. As discussed above, such a purchase is not divisible. Additionally, it is conceivable that there could be a separate retail marketing function for native load and a separate wholesale marketing function for native load. If a challenge is made to the way a utility organizes its functions, then the utility bears the burden of demonstrating that it is maintaining a separate staff to perform retail marketing functions. Furthermore, in such cases, it would clearly be inappropriate for the retail staff to share transmission information with the wholesale marketing staff.

8. Indirect Unbundled Retail Transmission in Interstate Commerce

Referencing the Commission's conclusion that section 212(h) does not prohibit the Commission from ordering public utilities to provide indirect unbundled retail transmission in interstate commerce, BPA states that it appears that the Commission intended to clarify its jurisdiction to order retail transmission in certain limited, interstate situations—namely, to ensure that state initiatives would not be frustrated by the failure of neighboring states to undertake similar initiatives. Where a state has not mandated retail access, but a local utility agrees to provide retail access,[115] BPA argues that it should not be required to distribute another supplier's power to its customers.

BPA also argues that section 212(h)(2) prohibits orders requiring ''indirect retail transmission.'' It declares that the Commission ignored section 212(h)(2), which it asserts prohibits orders requiring indirect retail transmission. BPA contends that, if it and other transmitting utilities are required to provide indirect retail transmission, BPA's ability to meet its statutory obligation to recover all of the costs of the Federal Columbia River Power System and the Commission's ability to meet its statutory obligation to ensure that BPA's rates are sufficient to assure repayment of the federal investment in the power system will be placed at risk.

Commission Conclusion. We disagree with BPA that we ignored section 212(h)(2) in concluding that we have the authority to order indirect retail transmission in interstate commerce to accommodate retail access programs ordered by a state or voluntary retail delivery by the local utility. We clarify that while section 212(h)(2) may limit the Commission in certain circumstances, as a general matter, we believe we can order indirect interstate transmission services necessary to accommodate direct retail access programs that are state ordered or voluntary. Clearly, whether section 212(h) would prohibit the Commission from ordering transmission in a particular circumstance would depend upon the facts presented, including who the transmission requestor is, who the seller of energy is, and who is transmitting or delivering the energy and over what facilities. If parties wish to raise section 212(h)(2) in a particular case, they may do so; however, we do not believe Congress intended section 212(h)(2) to be used as a competitive shield against state-ordered retail access programs or voluntary retail access by local utilities.[116]

9. Mobile-Sierra

Met Ed objects to what it describes as the Commission's asymmetric treatment of customers and suppliers in Order No. 888–A. First, it argues that the existence of uneven bargaining power prior to Order No. 888 (that is referred to in Order No. 888–A) does not provide a rational basis for imposing different standards for customer-initiated and supplier-initiated requests for modification of existing contracts. It says that the Commission does not identify the specific manner in which existing wholesale contracts would lose their just and reasonable character due to changes in the electric industry. ''Just as competitive wholesale markets may present opportunities to buyers that are less costly than existing contracts, they may also give sellers greater opportunities to reach new buyers who would be willing to pay more than customers under existing below-cost contracts. If the Commission's initiatives to expand wholesale markets provide a rational basis for making it easier for buyers to modify existing contracts, then these initiatives equally provide a basis to ease the burden on sellers.''[117]

Second, Met Ed argues that because the existence of uneven bargaining power was not universal, it cannot provide the basis for a uniform refusal to apply a just and reasonable standard in evaluating all supplier-initiated requests for modification (other than of stranded cost provisions). ''The Commission cannot properly distinguish customers from suppliers based on a premise that is only true in the 'majority' of the cases, particularly when the Commission has the ability to make the appropriate determination on a case-by-case basis.''[118]

Third, Met Ed says that the Commission's distinction between customers and suppliers is not rationally related to the purpose of Order No. 888. It contends that broad competition is not furthered by a policy that would hold suppliers, but not customers, to the terms of existing unfavorable contracts. Met Ed states that ending the subsidies reflected in long-term below-cost contracts promotes the most efficient use of power supply resources. According to Met Ed, Order No. 888-A's treatment of existing contracts will exacerbate stranded costs (a utility would not be able to obtain relief from a wholesale contract that does not cover its costs, while a customer under another contract could obtain a modification or termination of the contract). ''Even if the Commission persists in its conclusion that it can reasonably distinguish requests for modifications by customers from those by utilities because existing contracts

[115] *See also* Puget at 27.

[116] BPA's arguments that requiring indirect retail wheeling may put at risk its ability to meet its statutory obligation to recover all of the costs of the Federal Columbia River Power System and the Commission's ability to meet its statutory obligation to ensure that BPA's rates are sufficient to assure repayment of the federal investment in the power system are speculative and more appropriately addressed in a fact-specific proceeding if and when this possible risk may arise. Moreover, BPA may propose appropriate stranded cost provisions.

[117] Met Ed at 6.

[118] *Id.* at 7.

reflect one sided bargaining, it should clarify that it will not make such a distinction when customers had other options at the time the contracts were executed.''[119]

Commission Conclusion. Met Ed has not raised issues not previously addressed by the Commission. Concerning its argument that uneven bargaining power was not universal, Order No. 888 clearly recognized that this was the case.[120] However, we clarify that, in determining whether to modify an existing contract, we will look at, among other things, whether a customer had other supply options available to it at the time it negotiated its existing contract. We agree with Met Ed that the existence of uneven bargaining power may not have been ''universal'' and clarify that utilities are free to present to the Commission, on a case-by-case basis, arguments that their contracts are no longer in the public interest or just and reasonable, and therefore should be modified.

10. Tariff Issues

a. Load served ''behind-the-meter.'' Central Maine states that the Commission required all of a wholesale network customer's load ''behind-the-meter'' to be included in its load-ratio share. It asserts, however, that the Commission ''failed to state whether the utility also must include all of a retail customer's load 'behind-the-meter' in computing the load-ratio share.'' [121] It indicates that it is concerned that it cannot identify the ''behind-the-meter'' generation that its retail customers own and operate. Central Maine maintains that ''[o]nly if the utility invests significant effort and incurs substantial expense to install metering technology will it have the ability to monitor its retail customers.'' [122] In any event,

Central Maine believes that the Commission did not intend to require utilities to determine their retail customers ''behind-the-meter'' load when calculating network customers' load-ratio shares. Moreover, the Commission cannot require a non-jurisdictional wholesale customer to determine its retail customers ''behind-the-meter'' load. Thus, if FERC required jurisdictional companies to make such a determination, the load-ratio share of network non-jurisdictional wholesale customers would always be understated. The Commission should clarify Order No. 888–A so that it is clear that utilities are not required to meter retail customer's ''behind-the-meter'' load.[123]

Commission Conclusion. Central Maine's concern regarding the identification of a retail customer's ''behind-the-meter'' generation and load is unclear. The Commission's discussion in Order Nos. 888 and 888–A regarding the treatment of behind-the-meter generation and load specifically pertained to an individual network customer's designated network generation and load. If Central Maine's concern pertains to the calculation of a transmission provider's total network load, including the load of the transmission provider's retail native load customers, such an inquiry is beyond the scope of Order Nos. 888 and 888–A and should be addressed on a case-by-case basis.

b. Definition of ''Native Load Customers.'' Dairyland argues that the definition of ''Native Load Customers'' in section 1.19 of the pro forma tariff is limited to wholesale and retail *power* customers and ''could be read not to encompass the native loads of parties to transmission joint use and construction agreements but who are not *power* customers of the Transmission Provider.'' [124] It proposes that the following clause be added to the end of section 1.19: ''including obligations arising from transmission joint use agreements in effect as of July 9, 1996.'' [125] Dairyland argues that the Commission should recognize these agreements and modify the definition so that ''transmission facilities constructed and operated to meet the reliable electric needs of each party's native load customers are treated comparably, without regard to whether either party is or is not a 'power' customer of the other.'' [126] It further indicates that its primary concern in seeking this modification is in terms of priority under the pro forma tariff for curtailment and reservations and believes that its status and rights are unclear.

Commission Conclusion. We believe that Dairyland's argument is misplaced and deny its request for rehearing. In *Allegheny Power Systems, Inc., et al.,*[127] we found that Dairyland's joint use agreements ''are in the nature of bilateral transmission agreements and are not superseded or otherwise affected by Interstate Power's compliance tariff. Thus, any changes to the definition of 'native load customers' are not necessary.'' [128] Accordingly, any change to the definition of native load customers contained in the pro forma tariff would have no affect on Dairyland's joint use agreements.

We also note that Dairyland has stated that under its joint use agreement ''the native loads of Dairyland and the native loads of the public utility party to the agreement were to be treated comparably in terms of transmission service utilizing the transmission facilities.'' [129] Thus, Dairyland already is obtaining the comparable treatment that it is apparently seeking through its proposal to change the definition of native load contained in the pro forma tariff.

c. Schedule changes. NRECA states that Order No. 888–A provided that schedule changes for firm point-to-point service were not limited up to twenty minutes before the start of each clock hour, but could be set at a reasonable time limitation that is generally accepted in the region and consistently adhered to by the transmission provider. NRECA requests rehearing to not only permit, but also to require, scheduling changes during emergency conditions.[130] It asserts that the Commission should make this revision consistent with the language of section 30.4 of the pro forma tariff that permits network resources to be rescheduled in response to an emergency or other unforeseen condition. In any event, if ''schedule changes are not permissible in such situations, at least any associated penalties, *e.g.,* punitive charges for energy imbalances exceeding the 1.5% 'deadband,' should be waived.'' [131]

Commission Conclusion. We deny NRECA's rehearing request to require transmission providers to make schedule changes requested by customers during emergency conditions. It is the responsibility of transmission customers to make arrangements for emergencies, such as operating reserves for the loss of a power supplier's generation source. If an emergency

[119] *Id.* at 10.

[120] *See, e.g.,* FERC Stats. & Reg ¶ 31,048 at 30,193.

[121] Central Maine at 2.

[122] *Id.* at 3.

[123] *Id.*

[124] Dairyland at 4 (emphasis in original).

[125] Dairyland notes that it filed a supplemental rehearing request on this issue that the Commission accepted as a motion for reconsideration. It asserts that the Commission did not address its issue in Order No. 888–A, but instead described the arguments as being similar to an argument it rejected that joint planning is a sufficient criterion to be considered a ''Native Load Customer'' and that construction and operation by the transmission provider should not be necessary for native load status to be conferred.

[126] *Id. at 6.*

[127] 80 FERC ¶ 61,143 at 61,555 (1997).

[128] We further note that Interstate Power Company did not file on December 31, 1996, as provided in Order No. 888, to modify its joint use agreements with Dairyland. *See* 18 CFR 35.28(c)(1)(iii). Thus, those agreements must not prohibit transmission over the facilities to third parties and, accordingly, remain in effect as existing bilateral transmission agreements.

[129] Dairyland at 6.

[130] *See also* TAPS at 35–36; TDU Systems at 24–25.

[131] NRECA at 16; *see also* TAPS at 36–37.

arises, a transmission provider should not be required to accept a customer-requested schedule change, though we would expect the transmission provider to permit a schedule change to the extent possible. Granting NRECA's request would ignore the fact that requiring the transmission provider to accept a requested scheduling change may not be consistent with maintaining system reliability.

Moreover, an emergency situation does not automatically cause a customer to use Energy Imbalance Service or to pay a penalty. For example, if a customer resource becomes unavailable due to an emergency situation, but is replaced by an equivalent amount of reserves, the customer would remain in balance if its load meets the schedule.[132] However, if the emergency is the cause of the customer's energy imbalance, that is, the transmission provider is unable to deliver the scheduled energy, the customer should not be responsible for paying an Energy Imbalance Service penalty.

d. Restriction on making firm sales from designated network resources. NRECA argues that section 30.4 of the pro forma tariff unreasonably restricts network customers' ability to make firm sales from their generation and that similar restrictions do not apply to transmission providers' own generation resources.[133] It asserts that this restriction on network customers ''is unnecessarily limiting both the number of competitors and the array of generation products available, as well as skewing the market in favor of generation sales by incumbent public utility transmission providers.'' [134] If the Commission does not change its position, NRECA states that the Commission should at least provide network customers greater flexibility in designating network resources under section 30.1 of the pro forma tariff:

> the Commission should at least grant network customers the ability to designate network resources over shorter time periods (*e.g.,* one month) or permit the network customer to designate its network resources in a manner that varies by season or by month to track projected variations in network loads plus reserve requirements. This would provide network customers more flexibility in using their network resources to make firm off-peak sales to loads other than their network loads when it makes economic sense to do so, while still ensuring that adequate resources are committed to meet the network load and reserve requirements of the period.[135]

TDU Systems adds that if the Commission does not change its position, ''transmitting utilities should be required to designate their network resources, and those resources, too, should be restricted to serving the transmitting utilities' network loads.''[136]

Commission Conclusion. We disagree with NRECA, as well as TDU Systems, that the restrictions set forth in section 30.4 of the pro forma tariff do not also apply to a transmission provider's own generation resources. In Order No. 888, we explicitly stated that

> a transmission provider taking network service to serve network load under the tariff also is required to designate its resources and is subject to the same limitations required of any other network customer.[137]

In addition, we note that, contrary to NRECA's assertion, the pro forma tariff does not prevent network customers from designating network resources over shorter time periods or in a manner that varies by season or by month. It only prohibits network customers from making sales from *designated* network resources. The purpose of the prohibition is to ensure that such resources are available to meet the network customer's network load on a non-interruptible basis. Sections 30.2 and 30.3 of the pro forma tariff already provide network customers with a significant level of flexibility. Specifically, a network customer that seeks to engage in firm sales from its current designated network resources may terminate the generating resource (or a portion of it) as a network resource and request, as set forth in section 29 of the pro forma tariff, that the same generation resource be designated as a network resource effective with the end of its power sale. We note that network customers, as well as the transmission provider's merchant function, must obtain point-to-point transmission service for off-system sales.

e. Reactive Power. NY Com states that under Order No. 888–A ''a transmission customer may satisfy part of its obligation [to supply reactive power service] through self-provision or purchases from generating facilities under the control of the control area operator.'' [138] It requests clarification that the phrase ''under the control of the control area operator'' refers only to generators with continuously operating automatic voltage control (AVC). NY Com argues that units that do not have AVC and operate ''flat out'' do not support reliability and increase operating difficulty and inflict higher costs because system operators need to monitor local voltage levels and anticipate changing reactive support requirements.

The Independent Power Producers of New York, Inc. (NY IPPs) responds to NY Com's request that only generators with continuously operating AVC be allowed to self supply reactive power.[139] It asserts that ''[t]here is no reason to suppose that the Commission intended that suppliers of reactive power without AVC should not receive credit for the service they render.''[140] It claims that NY Com's assertion that generators that do not have AVC and operate flat out cannot supply reactive power without inflicting higher costs on the system ''shows a fundamental misunderstanding of the operations of an electric generator.'' [141] It maintains that

> [t]he ability to provide reactive support at full power output without imposing higher system costs has nothing to do with whether a generator has AVC. Rather, the ability to provide reactive power support stems from the design of the generator itself, specifically the rating of the rotor and stator windings. The NYPSC's assertion that providing reactive support manually ''increases operating difficulty and inflicts higher costs because system operators need to actively monitor local voltage levels, and anticipate changing local voltage levels'' is both unsupported and irrelevant.[142]

Moreover, it asserts that ''[t]o the extent that generators with AVC that self provide reactive support render a more valuable service than those that self provide reactive support without AVC, they should be credited accordingly—but that does not mean that generators without AVC should not be credited at all for self providing reactive support.'' [143] In addition, NY IPPs responds to NY Com's assertion that it has discouraged the practice of manual voltage support by requiring non-utility generators to either use AVC or pay a fee based on the absorption of reactive power. It states that NY Com's requirement ''that non-utility generators *pay* a utility when the generator *absorbs reactive power at the utilities' request* is

[132] *See* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,233 (emergency situations caused by loss or failure of facilities should be addressed in the transmission customer's service agreement (or the generation supplier's separate interconnection agreement) and not as part of Energy Imbalance Service).

[133] *See also* TDU Systems at 18–21.

[134] NRECA at 17; *see also* Dairyland at 8.

[135] NRECA at 18.

[136] TDU Systems at 21.

[137] FERC Stats. & Regs. ¶ 31,036 at 31,753–54.

[138] NY Com at 15–16.

[139] On April 11, 1997, NY IPPs filed an answer to the request for clarification of NY Com. In the circumstances presented, we will accept the answer notwithstanding our general prohibition on allowing answers to rehearing requests. *See* 18 CFR 385.713(d).

[140] NY IPPs at 3.

[141] *Id.*

[142] *Id.* at 3–4.

[143] *Id.* at 4.

currently the subject of litigation in the United States District Court for the Northern District of New York.'' [144]

TAPS is concerned that without specific tariff language some transmission providers will try to deny reactive power credits to transmission customers that should otherwise receive such credits. It suggests that the following language should be added to the pro forma tariff:

> The service agreement of the transmission customer that can supply at least a part of the reactive service it requires, either through self-supply or purchases from a third party, shall specify the generating sources made available by the transmission customer that provide reactive support.[145]

TAPS also asks the Commission to clarify that the phrase ''under the control of the control area operator'' refers to ''the reactive production or absorption capability of the generator and not necessarily to the generator's ability to produce real power.'' [146] It states that

> while a generator's real power output may be on automatic generation control (AGC) and dispatched economically, its reactive power output usually is not on automatic control or dispatched on a moment-by-moment basis. Rather, the plant operator separately regulates the output of the two kinds of power. As a result, a customer can give the control area operator the ability to rely upon the customer's generation to produce or absorb reactive power independent of control over the unit's real power output, for example, by the customer's setting its generator's voltage regulator to respond to the needs of the control area as established by the control area operator. Thus, the Commission's statement that ''a customer who controls generating units equipped with automatic voltage control equipment may be able to use those units to help control the voltage locally and reduce the reactive power requirement of the transaction,'' (Order No. 888–A at 150–51) should not be read to require that the entire generating unit be under the control area operator's control.[147]

Furthermore, TAPS argues that comparable standards should be applied to customer-owned and transmission provider facilities. ''The control area operator should not be permitted to refuse the offer of a customer to turn over to the control area operator the control of the reactive capabilities of the customer's generating facilities.'' [148] Moreover, it asserts that ''[i]f the control area operator is able to rely upon its own or its customer's facilities to produce or absorb reactive power, then rate base treatment or credits, respectively, are appropriate.'' [149]

Commission Conclusion. We do not agree with NY Com's assertion that the phrase ''generating facilities under the control of the control area operator'' refers only to generators with AVC. We clarify that what is ''under the control of the control area operator'' in Schedule 2 of the pro forma tariff is the reactive production and absorption capability of the generator and not the generator's ability to produce real power. With regard to the dispute between NY Com and NY IPPs concerning the appropriate reduction in charges for Reactive Supply and Voltage Controls from Generation Sources Service, we find that this dispute is fact-specific and beyond the scope of this proceeding.

There is no need to add the specific language to the pro forma tariff as requested by TAPS. As stated in Order No. 888–A, the Commission specifically requires that a transmission customer's service agreement specify all reactive supply arrangements, including the generating resources made available by the transmission customer that provide reactive support.

In response to TAPs' other concern, we note that Order No. 888 requires that a transmission customer obtain or provide ancillary services for *its* transactions. We do not intend that requirement to provide a means for a generation owner to compel a transmission provider to purchase services it may not need. As we stated in Order No. 888–A, a third party may offer ancillary services voluntarily to other customers if technology permits. However, simply supplying some duplicative ancillary services (*e.g.,* providing reactive power at low load periods or providing it at a location where it is not needed) in ways that do not reduce the ancillary services costs of the transmission provider or that are not coordinated with the control area operator does not qualify for a reduced charge.

f. Network Operating Agreements. TAPS asks that section 29.1 of the pro forma tariff be modified to permit a network customer to request that a network operating agreement be filed on an unexecuted basis, just as it may request a network service agreement to be filed on an unexecuted basis. It asserts that this would ''permit service to commence, pending resolution of disputed matters, and would reduce the ability of the transmission provider to use the network operating agreement as a competitive tool.'' [150]

Commission Conclusion. In Order No. 888–A, in response to TAPS' argument that to avoid improper use of operating agreements by transmission providers the Commission should either permit network operating agreements to be filed in unexecuted form or include a network operating agreement as part of the pro forma tariff, we rejected mandating a particular network operating agreement but indicated that

> If a transmission provider wishes to include a generic form of network operating agreement in its pro forma tariff (to be modified as required and as mutually agreed to on a customer-specific basis), it may propose to do so in a section 205 filing or it may file an unexecuted network operating agreement in a section 205 filing.
>
> To the extent a customer believes a transmission provider is engaging in unduly discriminatory practices via the network operating agreement, the customer may file a section 206 complaint with the Commission.[151]

On rehearing, TAPS points out that our approach would still permit a transmission provider to delay the commencement of service. We recognize this and will permit a network customer to request that a network operating agreement be filed on an unexecuted basis, just as we have allowed a network customer to request that a network service agreement be filed on an unexecuted basis. Accordingly, we will modify section 29.1 of the pro forma tariff by adding the following language to the end of section 29.1: '', or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement.'' [152]

g. Network customers with loads and resources in multiple control areas. TDU Systems argues that Order No. 888–A does not respond to its ''core contention that network service under the pro forma tariff does not provide them comparable service.'' [153] It argues that

> [r]equiring the network customer to assign a designated network resource to a single control area, and arbitrarily limiting the ability of a network customer to schedule the output of network resources between and among control areas by limiting the output of those resources to network load in a single control area, effectively prevents the network customer from operating an integrated system.[154]

Thus, it requests that the Commission ''rule that TDU systems with loads and resources in multiple control areas may

[144] *Id.* (emphasis in original).

[145] TAPS at 28.

[146] *Id.* at 29.

[147] *Id.* at 30.

[148] *Id.*

[149] *Id.*

[150] *Id.* at 34.

[151] FERC Stats. & Regs. ¶ 31,048 at 30,325.

[152] *See* Appendix B and note 1 *supra.*

[153] TDU Systems at 15.

[154] *Id.*

designate as Network Resources for each control area the totality of their resources that meet the owned, purchased, or leased requirement of section 1.25 of the tariff.'' [155]

TDU Systems further asserts that a network customer can integrate loads and resources in multiple control areas only by purchasing network service in each control area and point-to-point service for transmission between the control areas. Thus, it argues,

> [A]bsent a regional network tariff, the Commission should require the provision of service to network customers with loads and resources located on multiple systems under a rate that recovers the customer's load ratio share—but no more—of the transmission owners' collective transmission investment in the control areas that the customer straddles.[156]

Commission Conclusion. We disagree with TDU Systems that network service under the pro forma tariff does not provide network customers with comparable service. Significantly, a network customer with resources and loads in multiple control areas is simply not similarly situated to a transmission provider serving native load located entirely within the transmission provider's single control area. Unlike a transmission provider serving load entirely within a single control area, a network customer with resources and loads in multiple control areas must not only integrate its resources and loads within the individual control areas, but must also arrange transmission services (network or point-to-point) for transactions occurring between and among the multiple control areas in which it seeks to transact business. However, we emphasize that if a transmission provider has resources and loads in multiple control areas, it must treat network customers that also have resources and loads in multiple control areas on a comparable basis.

In this regard, we also disagree with TDU Systems' assertion that we have required a network customer to assign a designated network resource to a single control area and limit the scheduling of such resources to serve load in a single control area. Tariff sections 30.6 and 31.3 allow for the designation of both network resources and network loads that are not physically interconnected with the transmission provider. Under the pro forma tariff, a network customer that seeks network service for all of its loads in multiple control areas may designate all such loads as network loads.[157] By designating all of its loads as network loads, such network customer will receive comparable service *in* each control area and will have the ability to schedule the output of network resources between and among control areas, just as a transmission provider or other network customer would need to do to serve load in an adjacent control area.

TDU Systems is concerned with the rates it must pay to the various control area operators to integrate its resources and loads. In rejecting TDU Systems' virtually identical argument in Order No. 888–A, we explained:

> Because the additional transmission service to non-designated network load outside of the transmission provider's control area is a service for which the transmission provider must separately plan and operate its system beyond what is required to provide service to the customer's designated network load, it is appropriate to have an additional charge associated with the additional service.[158]

h. Network customer designation of load. TDU Systems asks the Commission to clarify that open access transmission providers must credit or eliminate double charges arising from the inability of network customers to designate less than all of the load at a delivery point as network load. TDU Systems asks the Commission to make the following points clear:

> first, there will be no double recovery of either transmission costs *or* ancillary costs that are being recovered in the existing bundled generation supply agreement; second, as the Commission properly noted in requiring the unbundling of bilateral economy energy coordination transactions, the transmission provider will not be permitted to recover more under the new arrangement for those (transmission and ancillary) services than it does under the existing bundled generation supply agreement; and third, the transmission provider is required to achieve these results by using one of the alternatives stated in Order No. 888–A at the transmission customer's election or by an alternative arrangement agreed upon by the customer.[159]

It concludes that ''[i]f the Commission relegates the customer to a section 206 complaint proceeding, it has reversed the burden of proof on the transmission provider to show that its increased rate is just and reasonable.''

Commission Conclusion. As noted by TDU Systems, we stated in Order No. 888–A that

> the Commission did not intend for a transmission provider to receive two payments for providing service to the same portion of a transmission customer's load. Any such double recovery is unacceptable and inconsistent with cost causation principles.[160]

We intended this language to apply broadly and, accordingly, clarify that it applies to transmission costs *and* ancillary costs. Moreover, while we expect transmission providers to design rates that will avoid double recovery of such transmission costs or ancillary costs, we believe that this is a fact-specific issue that is appropriately addressed on a case-by-case basis.[161] Finally, while we indicated in Order No. 888–A that a transmission customer may file a complaint under section 206 with the Commission to address any claims of double recovery, the transmission customer would most likely raise this issue in the section 205 proceeding in which the transmission provider files to initiate the particular service with the transmission customer. Indeed, it would be in such a section 205 proceeding in which this transitional problem would first arise and the transmission customer would first have the opportunity to challenge any possible double recovery.

11. Waivers of Order Nos. 888 and 889

NRECA states that the Commission's policy on waivers of Order Nos. 888 and 889 provides that such waivers terminate upon a request for service or a complaint. It argues that permitting the termination of a waiver upon a complaint improperly subjects the utility to baseless complaints and significantly diminishes the value of the waiver. It asserts that a waiver of Order No. 889 should terminate only upon a finding by the Commission that there is a valid basis for the complaint.[162] Similarly, it asserts that a waiver of Order No. 888 should terminate ''only upon a Commission order finding that, in light of changed circumstances or new evidence, the waiver should not be

[155] *Id.* at 18.

[156] TAPS at 18 n.36.

[157] Alternatively, a network customer with resources and load in multiple control areas may elect to designate only such load that is located in a single control area as its designated network load and separately arrange for transmission service (*e.g.,* point-to-point service) to serve load in adjacent control areas from generation resources located in the control area in which it designated its network load. Here too the network customer would be receiving comparable transmission service because a transmission provider or any other network customer seeking to serve load in an adjacent control area would also have to arrange for point-to-point transmission service to make the service possible.

[158] FERC Stats. & Regs. ¶ 31,048 at 30,255.

[159] TDU Systems at 23.

[160] FERC Stats. 7 Regs. ¶ 31,048 at 30,261–62.

[161] In this regard, we will not mandate that a transmission provider accept a customer-specified approach to resolving any double recovery concerns.

[162] *See also* TDU Systems at 10–12 (raising similar arguments with respect to waivers of Order No. 889).

continued and the utility should be required to file the pro forma tariff.'' [163]

Commission Conclusion. NRECA's request for rehearing with respect to the termination of a waiver of Order No. 888 should have been raised on rehearing of Order No. 888, which first established that a waiver would be granted if, among other things, the utility ''commits to file an open access tariff within 60 days of a request to use its facilities and to comply with the rule in all other ways.'' [164] Nothing set forth in Order No. 888–A changed this requirement. Accordingly, NRECA's request for rehearing was not timely filed.

However, we note that the Commission, in a recent order modifying the circumstances under which a waiver of Order No. 889 [165] will be revoked,[166] addressed this very issue:

> we will not, however, alter our determination that a utility that has been granted waiver of Order No. 888 is required to file a pro forma tariff within 60 days after it receives a request for transmission service and must comply with any additional requirements that are effective on the date of the request. The filing with the Commission of a pro forma tariff places significantly less burden on a utility than does full compliance with Order No. 889, and we continue to believe that 60 days from receipt of a request for service provides sufficient time for such compliance.[167]

12. Financial Independence of ISO Employees

NEPOOL expresses concern that the requirement in Order No. 888–A that ISO employees sever *all* financial ties ''can be interpreted to foreclose the Commission from even considering the merits of provisions for ownership of securities by ISO employees contained in NEPOOL's ISO proposal that is now pending before the Commission in Docket Nos. OA97–237–000 and ER97–1079–000.'' [168] It contends that severance of all financial ties would impose an economic hardship on certain NEPOOL employees in pension and stock ownership plans of market participants through the years. In particular, it notes that many of the existing NEPOOL staff have accumulated Northeast Utilities stock in their pension or other employee benefit plans, but that the market price of that stock has recently declined significantly. However, NEPOOL has required ISO employees to divest themselves of such securities in excess of $50,000 within six months of their employment by the ISO. Thus, NEPOOL requests that the Commission clarify that it could waive the requirement that ISO employees sever *all* financial ties with market participants in compelling circumstances or clarify the acceptable length of a transition period during which they may continue to hold such securities.

Commission Conclusion. In a recent order conditionally authorizing the establishment of an ISO by NEPOOL, the Commission specifically addressed the concerns raised here by NEPOOL.[169] The Commission rejected NEPOOL's proposal to allow employees to possess securities of market participants as long as the value does not exceed $50,000. The Commission reaffirmed its strong commitment, set forth in Order Nos. 888 and 888–A, to ensure that an ISO is truly independent and that employees of an ISO are financially independent of market participants. However, the Commission recognized, as it had in Order No. 888–A, that there may be a need for flexibility with respect to the length of a transition period and that this matter is best addressed on a case-by-case basis.

13. Distribution Charges

NY Com seeks clarification of the Commission's statement that a utility is free to include a ''distribution charge'' in a customer's service agreement and/or the network customer's network operating agreement.[170] In particular, it requests that the Commission clarify that it did not intend to preempt state jurisdiction, but rather that when a term, condition or rate is required for local distribution service, the state determination will apply. It asserts that such a clarification would avoid forum shopping that would otherwise occur. In the alternative, it requests rehearing, arguing that the Federal Power Act, its legislative history and case law all dictate against Commission jurisdiction over local distribution.

Commission Conclusion. We clarify, as requested by NY Com, that when a term, condition or rate is required for *local* distribution service the state determination applies. We reiterate that we believe there is always a local distribution service element of a retail transaction, through which the state may impose charges on the retail customer. We also reiterate, however, that where a public utility is delivering unbundled energy to a supplier that then resells the energy to an end-user, the Commission has exclusive jurisdiction over the public utility's facilities used to effect the transaction without regard to their being labeled ''transmission,'' ''distribution,'' or ''local distribution.'' [171] Moreover, where a public utility is delivering unbundled energy from a third-party supplier directly to an end user, the particular facts of the case will determine which of the facilities are FERC-jurisdictional transmission facilities and which are state-jurisdictional local distribution facilities.[172]

14. Tight Power Pools

a. Non-pancaked rates. NY Com seeks clarification of the following statement in Order No. 888–A:

> Order No. 888 does not require a non-pancaked rate structure unless a non-pancaked rate structure is available to pool members. Although the Commission has encouraged the industry to reform transmission pricing, the Commission's current policy does not mandate a specific transmission rate structure.[173]

It argues that this statement conflicts with other statements that ''require power pools to file joint pool-wide tariffs and to offer all transmission services that they are *capable* of providing.'' [174] NY Com asks that the Commission clarify that utility members of tight power pools must provide transmission service jointly under a single tariff. It states that this is the best way to eliminate undue discrimination. It argues that tight power pools must provide, pursuant to prior Commission orders, all transmission services that they are reasonably capable of providing and must file joint tariffs to provide

[163] NRECA at 12.

[164] FERC Stats. & Regs. ¶ 31,036 at 31,853.

[165] Open Access Same-Time Information System and Standards of Conduct, *Final Rule*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889–A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, published elsewhere in this issue of the **Federal Register,** FERC Stats. & Regs. ¶ _____ (1997).

[166] NRECA's request with respect to the revocation of waivers of Order No. 889 is addressed in Order No. 889–B, which is being issued concurrently with this Order. In Order No. 889–B, the Commission notes that in Central Minnesota Municipal Power Agency, *et al.*, 79 FERC ¶ 61,260 (1997) (*Central Minnesota*), it already has revised its approach concerning the revocation of waivers of Order No. 889 to provide that such waivers will remain effective until the Commission takes action in response to a complaint, rather than until 60 days after a complaint to the Commission.

[167] *Central Minnesota*, 79 FERC at 62,127 (1997).

[168] NEPOOL at 2.

[169] New England Power Pool, 79 FERC ¶ 61,374 (1997), *reh'g pending.*

[170] NY Com at 5–12.

[171] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,969 (Appendix G) and Allegheny Power System, Inc., *et al.*, 80 FERC ¶ 61,143 at 61,551–52 (1997).

[172] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,969.

[173] NY Com at 12.

[174] *Id.* at 13 (emphasis in original).

transmission service on a pool-wide basis.

Commission Conclusion. NY Com appears to be confusing *services* that a power pool is capable of providing with *pricing methodologies* that a power pool may elect to use. While the Commission required that by December 31, 1996 all pool transactions be taken under a joint pool-wide tariff on file with the Commission, the Commission did not mandate a specific transmission rate structure for such tariff.[175] As we stated in Order No. 888–A, the primary goal for pooling arrangements is to ensure comparability regarding transmission services offered on a pool-wide basis. Thus, comparability is achieved if the same service is provided at the same or comparable rate to both pool and non-pool members.[176]

b. Coordination transactions. Otter Tail requests that the Commission clarify the following statement in Order No. 888–A:

> We do not find it to be unduly discriminatory to provide *some pool-wide transmission services* to members under a pooling agreement and to provide *other transmission services* to members under the individual tariff of each member, as long as members and non-members have access to the same transmission services on a comparable basis and pay the same or a comparable rate for transmission.[177]

It asks the Commission to clarify that this statement

> Is meant only to indicate that in the case of *different* services, one service (e.g., wholesale transactions) can be offered to all potential customers under the pool tariff, but another service (e.g., ancillary services) may not be offered to any customers under the pool tariff. Otter Tail specifically requests that the Commission clarify that where the *same* service is involved, pools cannot discriminate against certain transactions based solely on the transaction's duration, that is, pool-wide tariffs cannot exclude longer term transactions but include short-term transactions.[178]

In its case, Otter Tail is concerned that MAPP limits coordination transactions under the pool to those with a duration of two years or less and thereby prevents any longer term service from using the pool tariff. It argues that MAPP's tariff does not comply with Order No. 888 because it does not offer pool-wide service for *all* coordination transactions, regardless of duration. Otter Tail further argues that excluding the benefits of pool-wide service for coordination transactions based only on the length of term is contrary to, and incompatible with, Congress' and the Commission's goal to promote competition at the generation level and permits pools to exercise market power.

Commission Conclusion. We disagree with Otter Tail. As we stated in Order No. 888–A, the primary goal of Order No. 888's requirements for pooling arrangements, including ''loose'' pools, such as MAPP, is to ensure comparability regarding transmission services that are offered on a pool-wide basis.[179] In the case of the MAPP agreement, pool transactions are limited to periods not to exceed two years for *all* members.[180] Comparability is achieved if all parties, both pool members and non-pool members, are treated in a non-discriminatory fashion as to access to transmission services, the types of transmission services and the rates paid for such transmission services.

In addition, Order No. 888 requires loose pools to take service under a joint pool-wide tariff for all pool transactions.[181] If transactions of more than two years in duration are not pool transactions, then transmission for those transactions need not be pursuant to the pool-wide tariff, and instead would be provided pursuant to the individual companies' pro forma tariffs. This is consistent with our finding in Order No. 888–A that we will not require pool members to offer transmission services to third parties that the pool members do not provide to themselves on a poolwide basis.[182]

15. Legal Authority

Puget states that the Commission does not have the legal authority to require public utilities to file open access tariffs and argues that Order No. 888 does not contain any specific finding that any rate, term or condition of Puget's tariff is unjust, unreasonable or unduly discriminatory or preferential.

Commission Conclusion. The Commission set forth its legal authority to require public utilities to file open access tariffs in Order No. 888. Puget's request for rehearing with respect to this issue should have been raised on rehearing of Order No. 888 and therefore was not timely filed.[183]

16. Ancillary Services

Puget argues that ancillary services such as reactive power and voltage control cannot be considered merely ancillary to the provision of transmission service, but are significant generation services that should be subject to market rates. Puget asserts that ''[i]t is wholly inappropriate for the Commission to provide for the sale of power as an ancillary service under the pro forma tariff; instead, utilities such as [Puget] should be compensated for the sale of such power at market based rates.'' [184] It argues that the Commission ''must recognize that ancillary services are generation related and should be priced at market in order to be consistent.'' [185]

Commission Conclusion. Puget raises issues that were previously addressed in Order No. 888. In that order the Commission determined that ancillary services are transmission related and indicated that market-based pricing for ancillary services would be addressed on a case-by-case basis. Puget's request for rehearing with respect to these issues should have been raised on rehearing of Order No. 888 and therefore was not timely filed.

17. Fair Market Value

Puget argues that Order No. 888–A improperly shuts the door on the pricing of transmission property at fair market value. Citing footnote 261 of Order No. 888–A,[186] Puget asserts that the Commission changed its policy from Order No. 888 and claims that in Order No. 888–A ''the Commission ruled that each utility is now expressly limited by the transmission pricing policy to charging only embedded costs for existing transmission facilities to competitors and others even though rates for generation assets are priced at market.'' [187] Puget argues that Order No. 888–A achieves ''the effect of a condemnation by forcing [Puget] and other integrated electric utilities to allow competitors to use private utility property, but at less than fair market value.'' [188] Puget further argues that the Constitution ''does not permit the taking of private property of one citizen to

[175] However, as explained in Order No. 888–A, the Commission did require that all transmission rate proposals filed in compliance with Order Nos. 888 and 888–A be cost based and meet the standard for conforming proposals set out in the Commission's Transmission Pricing Policy Statement. *See* 18 CFR 2.22.

[176] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 31,728.

[177] Otter Tail at 3 (emphasis added by Otter Tail).

[178] *Id.* at 4 (emphasis in original).

[179] FERC Stats, & Regs. ¶ 31,048 at 31,241.

[180] Mid-Continent Area Power Pool Rate Schedule, FERC No. 5.

[181] FERC Stats. & Regs. ¶ 31,036 at 31,728.

[182] *See* FERC Stats. & Regs. ¶ 31,048 at 30,241.

[183] We note that Puget filed a rehearing request of Order No. 888, but did not challenge the Commission's authority to require public utilities to file open accesss tariffs.

[184] Puget at 18.

[185] *Id.* at 19.

[186] Footnote 261, which is in the section entitled Opportunity Cost Pricing, provides in relevant part that ''[u]nder the Commission's transmission pricing policy, utilities are limited to charging the higher of embedded costs or opportunity/incremental costs.''

[187] Puget at 21.

[188] *Id.* at 21–22.

benefit competitors or other private citizens.'' It contends that

[T]he voluntary provision of transmission service to noncompetitors in an entirely cost-based integrated system is not the same as a forced provision of service and use of property by a competitor under a new set of regulations treating generation at market rates.[189]

Puget goes on to argue that

Order 888 erroneously asserts that there ''simply cannot be an unconstitutional taking of property when public utilities continue to have the right to file for and receive rates that provide them a reasonable opportunity to recover their prudently incurred costs.'' 62 Fed. Reg. at 12,433. For example, by illegally requiring unbundling of generation assets at market without at the same time providing for utility recovery of the fair market value of its transmission property, the Commission is attempting to deprive public utilities of fair market value compensation.[190]

In conclusion, Puget declares that ''[t]he Commission cannot create a situation in which generation is sold at a new market-based rate and transmission is limited to an old historic embedded-cost rate. Neither the Constitution nor the FPA will permit such a result.''[191]

Commission Conclusion. We reject Puget's rehearing request. Puget makes a far-ranging argument that Order No. 888–A improperly shuts the door on the pricing of transmission property at fair market value. It bases its argument entirely on a single footnote in Order No. 888–A that has been taken completely out of context. The footnote in Order No. 888–A cited by Puget merely recites the Commission's longstanding policy as to opportunity cost pricing.[192] Indeed, in the sentence to which that footnote is attached, the Commission explicitly stated that it ''does not believe that any changes are necessary to its policy on opportunity cost recovery.''[193] Moreover, the entire discussion to which that footnote applies is in a section entitled ''Opportunity Cost Pricing.''[194]

18. Pre-Existing Transmission-Only Contracts

Soyland argues that the Commission's *Mobile-Sierra* findings must apply not only to wholesale requirements contracts but also to unbundled transmission-only contracts. It asserts that ''[t]here is no legitimate reason to deny unbundled, transmission-only customers timely and meaningful access to the open access regime and competitive markets on the same terms as requirements customers.''[195] It contends that it faced the same problem as requirements customers—''use of transmission monopoly power to force a purchase of power as a condition to getting transmission access to deliver owned resources from off-system.''[196]

Moreover, it asserts that the Commission has not explained how or why requirements contracts and transmission-only contracts should be treated differently as a result of the past and continuing changes in the industry. Soyland further states that utilities had the upper hand over ''customers who executed unbundled transmission and power supply contracts simultaneously; together, such contracts are the functional equivalent of bundled partial requirements contracts, and should not be subject to a different standard for contract reform.''[197]

Commission Conclusion. Soyland's rehearing request addresses an issue that should have been raised on rehearing of Order No. 888. In that order, the Commission explicitly indicated that customers under *requirements* contracts executed on or before July 11, 1994 that contained *Mobile-Sierra* clauses should have the opportunity to demonstrate that their contracts no longer are just and reasonable.[198] Soyland's opportunity to request that we expand the scope of the contracts covered to include unbundled transmission-only contracts was on rehearing of Order No. 888.[199] Accordingly, Soyland's request for rehearing with respect to this issue was not timely filed.

19. Apportionment of Transmission Revenues for Public Utility Holding Companies and Power Pools

TDU Systems asks the Commission to clarify that the ''apportionment of credits for customer transmission facilities among the operating companies of a utility holding company or in power pools should be subject to Commission approval.'' TDU Systems states that the method of crediting transmission customers for operating companies' uses of their own and each other's transmission facilities in setting transmission rates must meet the Commission's comparability standards and should not be filed on a unilateral basis. Similarly, it requests that customer credits for pool participants' use of their own and each other's transmission facilities should be subject to Commission review in approving the pool's transmission rates and tariff terms and conditions.[200]

Commission Conclusion. TDU Systems' rehearing request addresses issues that should have been raised on rehearing of Order No. 888. In Order No. 888, the Commission stated that credits for customer-owned facilities should be addressed on a case-by-case basis.[201] Accordingly, TDU Systems' request for rehearing with respect to these issues was not timely filed.

20. Accounting for Transmission Provider's Own Use of Its System

TDU Systems argues that the Commission's requirement that a transmission provider's methodology to credit customers for the transmission provider's off-system sales be addressed in compliance filings and will depend on the rate design is insufficient.[202] It argues that this ignores that

Comparability has a time dimension, requiring the prompt crediting of such charges if they are not automatically accounted for in the rate design. Thus, the order fails to address whether a new kind of rate mechanism is needed if comparability is to be ensured on an ongoing basis under open-access transmission, just as the Commission years ago approved the use of fuel-adjustment clauses to deal with more volatile fuel prices. Requiring parties to resolve this issue in individual compliance filings does not address this generic problem. The Commission should provide more guidance to public utilities as to what crediting mechanisms are necessary if comparability is to be achieved.[203]

Commission Conclusion. In Order No. 888–A, the Commission explained that an automatic pass-through mechanism for revenue credits raises a number of potential problems including: ''(1) use of estimates versus actuals; (2) the appropriate time period to be utilized and (3) firm versus non-firm distinctions.''[204] The Commission further noted that the appropriate treatment of revenue credits for off-system sales is dependent on the rate design used by a transmission provider and concluded that this issue is not appropriately resolved on a generic basis. Despite these identified problems, TDU Systems continues to request that

[189] *Id.* at 26.

[190] *Id.*

[191] *Id.* at 27.

[192] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,739–40; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,263–66.

[193] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,625.

[194] *Id.* at 30,263.

[195] Soyland at 8.

[196] *Id.*

[197] *Id.* at 10.

[198] FERC Stats. & Regs. ¶31,036 at 31,664.

[199] In this regard, we note that other entities did file rehearing requests of Order No. 888 seeking to expand the scope of the contracts covered by the Commission's *Mobile-Sierra* findings. *See* Order No. 888–A, FERC Stats. & Regs. ¶31,048 at 30,190–91.

[200] TDU Systems at 33–34.

[201] *See* FERC Stats. & Regs. ¶31,036 at 31,742.

[202] TDU Systems at 34–35.

[203] *Id.* at 34–35.

[204] FERC Stats. & Regs. ¶31,048 at 30,310.

the Commission adopt an automatic revenue credit mechanism without attempting to address such problems or proposing an appropriate mechanism to accomplish its request.

To bolster its proposal, TDU Systems claims that automatic treatment of revenue credits is comparable to the Commission treatment of fuel charges through the use of an automatic fuel adjustment charge. We disagree. An automatic fuel cost adjustment clause was determined to be appropriate because of the unpredictability of fuel prices.[205] TDU Systems has not demonstrated that revenue credits warrant the same treatment.[206]

Moreover, TDU Systems has not demonstrated that the lack of an automatic credit mechanism is likely to result in unjust and unreasonable rates. For example, the Commission's traditional means of accounting for transmission revenues from non-firm uses of the transmission system is to reflect a representative level of revenue credits (based on historical and/or projected revenue levels) in each rate case, which has the effect of lowering the transmission rate for all firm transmission users.[207] TDU Systems has not shown why a similar rate case approach to revenue credits (as opposed to an automatic credit mechanism) is not appropriate, particularly for all transmission providers. In any event, we would anticipate little or no difference between the results of an automatic revenue credit mechanism and our traditional approach and TDU Systems has not shown otherwise.

Finally, TDU Systems' proposal is one-sided in that it would only require the automatic passthrough of revenues from the *transmission provider's* use of the transmission system for off-system sales. As the Commission stated in Order No. 888–A,

> revenue from the transmission component of *all* off-system uses of the transmission system *(whether by the transmission provider or a transmission customer)* must be treated on a comparable basis, whether through rate design or through revenue credits.[208]

B. Stranded Cost Issues[209]

1. Municipal Annexation

In Order No. 888, the Commission decided that it would not be the primary forum for stranded cost recovery in situations in which an existing municipal utility annexes territory served by another utility or otherwise expands its service territory.[210] In Order No. 888–A, the Commission reconsidered this decision and concluded that it would be the primary forum for stranded cost recovery in a discrete set of municipal annexation cases, namely, those involving existing municipal utilities that annex retail customer service territories and, through the availability of Commission-required transmission access, use the transmission system of the annexed customers' former supplier to access new suppliers to serve the annexed load.[211]

A number of petitioners seek rehearing or reconsideration[212] of the Commission's decision in Order No. 888–A to be the primary forum for stranded cost recovery in the case of municipal annexations.[213] Some oppose this decision for the same reasons that they opposed the Commission's decision to be the primary forum for stranded cost recovery in the case of new municipal utilities. For example, some entities argue that the Commission does not have any authority with respect to costs in retail rate base that may be stranded as a result of the annexation of electric service territory by a municipal utility.[214] A number of petitioners also contend that municipal annexation occurs pursuant to state or local law, not federal law, and that every facet of municipal annexation, including compensation and valuation, is governed by state or local authorities.[215]

Several submit that annexation is a form of franchise competition that predated Order No. 888, that transmission access was available (though not as readily as after Order No. 888) for many franchise competitors utilizing annexation,[216] and that annexations have occurred and will continue to occur based upon motivations removed from the open access regime.[217] CAMU states that

> [a]nnexations have occurred and will continue to occur in a[n] unbroken string based upon motivations entirely removed from this Commission's open access regime. There is simply no reason to assume that the open access rule will accelerate the pace of annexations. [[218]]

NARUC asks the Commission to grant rehearing as a matter of policy. It argues that the Commission's assertion of authority to address stranded cost issues related to annexation will force the Commission to inject itself into state-established processes to second-guess a state commission's cost recovery determinations. According to NARUC, this will require the Commission to resolve difficult factual issues to match specific generation and transmission facilities with specific annexed customers.[219]

CAMU similarly contends that the Commission's assertion that it is the primary forum for the resolution of annexation-related stranded cost issues will introduce needless procedural complications. CAMU submits that various state-created mechanisms exist for the identification and payment of just compensation in the case of municipal annexations. It questions

[205] *See* Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities, FERC Stats. & Regs. ¶30,524 at 30,800 (1983).

[206] In Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶_____ (1997), issued concurrently with this order on rehearing, the Commission made an exception to its general approach to revenue credits and allowed monthly crediting of non-firm transmission revenues. However, this was done in the context of a major restructuring of a tight power pool.

[207] *See, e.g.*, Pennsylvania Power Company, 26 FERC ¶61,354 at 61,781 (1984).

[208] FERC Stats. & Regs. ¶31,048 at 30,310 (emphasis added).

[209] Some of the rehearing requests raise issues that previously were raised on rehearing of Order No. 888 and were addressed by the Commission in Order No. 888–A. The Commission will not further address such issues in this proceeding. For example, Puget repeats some of the same arguments that it raised in its request for rehearing of Order No. 888 concerning the federal causes of stranded costs, the Commission's alleged abdication of its legal authority to ensure recovery of stranded costs associated with bypass and retail wheeling, the application of the reasonable expectation test to departing retail customers, and the Commission's failure to include deferred costs in the revenues lost formula. The Commission addressed these concerns in Order No. 888–A. *See* FERC Stats. & Regs. ¶31,048 at 30,358–62, 30,424, 30,426–27. TDU Systems reiterates its objection to the Commission's elimination of the section 35.15 prior notice of termination requirement for power sales contracts executed after July 9, 1996 that terminate by their own terms. The Commission addressed TDU Systems' concerns in this regard in Order No. 888–A. *See* FERC Stats. & Regs. ¶31,048 at 30,392, 30,393–94.

[210] FERC Stats. & Regs. ¶31,036 at 31,818.

[211] FERC Stats. & Regs. ¶31,048 at 30,408–09.

[212] As discussed above, APPA filed its request for rehearing out-of-time. Accordingly, we are treating APPA's pleading as a motion for reconsideration.

[213] *See* APPA, CAMU, IL Com, NARUC, TAPS. TDU Systems, on the other hand, argues that the Commission should permit non-public utilities providing reciprocal transmission service to recover stranded costs arising from municipal annexation. TDU Systems submits that allowing public utilities to seek stranded cost recovery arising from municipal annexation exacerbates the unequal and unduly discriminatory treatment accorded transmission dependent utilities and electric cooperatives.

[214] *See* APPA at 11–12; IL Com at 4–5; NARUC at 2–3.

[215] *E.g.*, APPA at 12–13; NARUC at 3; TAPS at 24–25. APPA objects that federal regulation of stranded costs associated with municipal annexation results in the establishment of overlapping federal/state authority that precludes the execution of state laws by state authority in a matter normally within the power of the state, in violation of the Tenth Amendment. APPA at 13.

[216] APPA at 11; *see also* NARUC at 3.

[217] CAMU at 2.

[218] *Id.*

[219] NARUC at 3–4.

how the Commission will offset against stranded cost recovery any compensation provided under state law and whether the Commission will await the completion of state proceedings before it addresses the issue.[220] CAMU asks the Commission to defer to existing state mechanisms and to be the primary forum for the resolution of stranded cost recovery issues in annexation situations only where there is no state procedure for stranded cost recovery.

IL Com argues that determining whether the availability of wholesale open access is the principal cause of the stranding of public utility costs would be administratively difficult.[221] IL Com also submits that the Commission's expectation that parties raise retail-turned-wholesale stranded cost claims before this Commission in the first instance is internally inconsistent with, and contradictory to, its statements that it will give great weight in its proceedings to a state's view of what might be recoverable and will deduct any recovery a state has permitted from departing retail-turned-wholesale customers from the costs for which the utility will be allowed to seek recovery under the Rule.[222]

Commission Conclusion. After careful consideration of the arguments raised on rehearing, we have decided not to grant rehearing, but we do provide further clarification of our decision in Order No. 888–A to be the primary forum for stranded cost recovery in certain cases involving municipal annexation. As a policy matter, we will consider recovery of stranded costs that potentially could arise as a result of municipal annexation but only when there is a sufficient nexus in such cases to the Commission's Open Access Rule. To clarify, this determination to be the primary forum is not a blanket determination for all cases involving annexation. A determination of what circumstances make Commission review appropriate will be made on the facts pertinent to individual cases. The Commission has limited the opportunity to seek stranded cost recovery under the Rule to situations in which the availability and use of wholesale open access transmission enable a generation customer to escape a current power supplier to obtain cheaper power supplies. Annexations occur for a myriad of reasons that may have nothing to do with seeking less expensive power supplies (for example, tax or zoning considerations or consolidation of local public services). These reasons existed before adoption of Order No. 888 and, absent the nexus to the new availability of these transmission services, would not require us to consider the stranded costs from annexation in the first instance. On the other hand, an existing municipal utility that has newly-annexed territory may use an open access tariff of the annexed customers' former power supplier. Accordingly, the Commission does not believe it is necessary to reverse its previous position that annexations may raise jurisdictional stranded cost issues but instead provides this clarification.

In the course of reviewing the rehearing petitions on annexation, the Commission has also had the opportunity to reflect on the rationale for our decision to be the primary forum for addressing the recovery of stranded costs associated with retail-turned-wholesale customers (including a newly-formed municipal utility). We wish to further elaborate upon and clarify our prior discussions about recovery of costs stranded by retail-turned-wholesale customers.[223]

First, in setting forth our position on costs stranded in certain retail-turned-wholesale and municipal annexation situations, the Commission recognized that states may also have jurisdiction over retail-turned-wholesale stranded costs and that state adjudications of such costs may precede consideration of them here.[224] Moreover, we indicated that ''we are not second-guessing the states as to what a utility may recover under state law.''[225] As we stated in Order No. 888–A and reiterate here,

> Our decision to be the primary forum for recovery of stranded costs from retail-turned-wholesale customers is not intended to prevent or to interfere with the authority of a state to permit any recovery from departing retail customers, such as by imposing an exit fee prior to creating the wholesale entity.[226]

In making this statement, the Commission clearly recognized that it may indeed be the states that first address the difficult stranded cost issues associated with the formation of new municipal utilities or other wholesale entities. The Commission contemplated then, as now, that it would nevertheless adjudicate these stranded cost issues where states lack authority to do so or where, based on the record before us, they fail to provide a forum.[227]

Second, as the Commission stated in Order No. 888–A,

> if the state has permitted any recovery from departing retail-turned-wholesale customers [for example, if it imposed an exit fee prior to, or as a condition of, creating the wholesale entity], such amount will not be stranded for purposes of this Rule. We will deduct that amount from the costs for which the utility will be allowed to seek recovery under this Rule from the Commission.[228]

Further, we will take into account state findings on cost determinations associated with retail-turned-wholesale situations and ''we will give great weight in our proceedings to a state's view of what might be recoverable.''[229] We believe it is important to emphasize that in those instances where states do address stranded costs associated with retail-turned-wholesale customers and in cases of municipal annexation, we intend to give substantial deference to their determinations.

2. Pre-existing Transmission Rights

TAPS requests clarification that the required nexus between the availability and use of Commission-required transmission access and the stranding of costs would not be met ''if the municipal utility, including as expanded through annexation, possessed rights to transmission prior to Order No. 888 and EPAct (for example, NRC license conditions and the like).''[230] TAPS submits that ''[t]he utility exercising these transmission rights should not be subject to stranded costs claims before the Commission simply because the municipal utility chooses to use the Commission's preferred open access tariff, instead of a

[220] CAMU at 3–5. CAMU notes that some state compensation statutes require the annexing municipality to pay ''expectation'' damages for a defined future period based upon revenues received from the annexed area. CAMU says that this element of damage, which is applied in addition to payment for condemned facilities, is meant to liquidate claims for lost service territory, idled generation assets and other business opportunities, but the awards do not separately value each of these elements of damage. CAMU questions how the Commission is going to ascertain what element of recovery pertains specifically to stranded costs if a state has adopted this liquidated damages approach. *Id.* at 5.

[221] IL Com at 5.

[222] *Id.* at 5–6.

[223] In so doing, we also reiterate our concern (expressed in Order Nos. 888 and 888–A) that there may be circumstances in which customers and/or utilities could attempt, through indirect use of open access transmission, to circumvent the ability of any regulatory commission—either this Commission or state commissions—to address recovery of stranded costs. In Order Nos. 888 and 888–A, we reserved the right to address such situations on a case-by-case basis. Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,819; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,409.

[224] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,819; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405.

[225] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405.

[226] *Id.* at 30,410.

[227] *See* City of Las Cruces, New Mexico, 80 FERC ¶ 61,160 (1997).

[228] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405. *See also* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,819.

[229] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405.

[230] TAPS at 27.

bilateral or other arrangement available under pre-existing rights.'' [231]

Commission Conclusion. We will deny TAPS' requested clarification. The existence of rights to transmission prior to Order No. 888 would not, in and of itself, indicate that the customer should be relieved of potential stranded cost liability under Order Nos. 888 and 888–A.[232] It may be that a customer with some right to transmission service prior to Order No. 888 (for example, as a consequence of NRC license conditions), was unable to reach an alternative supplier through the use of that transmission. Thus, notwithstanding the existence of pre-existing transmission rights, and depending on the facts of a particular case, it may be that the utility incurred costs based on a reasonable expectation of continuing to serve the customer.

On this basis, the Commission will not conclusively presume that a customer with a pre-existing right to transmission service could never be subject to a stranded cost obligation under Order Nos. 888 and 888–A. Similarly, the Commission will not conclusively presume that the mere existence of a pre-existing right to transmission service precludes any reasonable expectation of continued service by the utility. However, the existence of pre-existing transmission rights, and any circumstances surrounding them, may be used as evidence in the determination of whether the utility had a reasonable expectation of continuing to serve a customer. [233]

3. Load Growth and Excess Capacity

Boston Edison seeks rehearing of the Commission's finding in Order No. 888-A that a ''cost is not stranded if it is fully recovered in the cost-based rates paid by native load.'' [234] It submits that this phrase

> Suggests that the cost of capacity released by a departing wholesale customer can and should be recovered in the rates of the remaining retail and wholesale customers if the remaining customers' load or load growth will be sufficient to absorb the released capacity. . . . Such cost shifting directly contradicts the cost responsibility principles set forth in Order No. 888 [*i.e.*, direct assignment].[235]

Boston Edison objects that the rationale for this policy reversal is not articulated in Order No. 888–A.

Commission Conclusion. At the outset, we reiterate that we remain committed to the cost responsibility principles established in Order No. 888 and continue to believe that a departing wholesale customer should be responsible for the costs it strands. Our statement that a ''cost is not stranded if it is fully recovered in the cost-based rates paid by native load'' was not meant to imply that the cost of capacity released by a departing wholesale customer should always be recovered in the rates of the remaining retail and wholesale customers through load growth. Rather, our discussion of load growth correctly recognizes that in some instances a utility can meet native load growth with existing capacity freed-up by the departure of wholesale load. If a utility can recover the costs of existing capacity freed up by a departing customer from another customer or group of customers, the expected revenues should be reflected in the CMVE component of the formula.[236] Moreover, our requirement that a utility reflect in the CMVE component of the formula the revenues it expects to receive from the sale of the released capacity does not automatically result in remaining customers being forced to subsidize a departing customer's stranded cost obligation as Boston Edison posits. Rather, the rate treatment of the released capacity needed to meet the load growth of native load customers is an open issue that is properly addressed in future rate proceedings.

In short, the revenues lost approach already takes account of the marketability of the released capacity and appropriately incorporates load growth associated with remaining retail and wholesale customers and does not contradict the cost responsibility principle set forth in Order Nos. 888 and 888–A.

4. G&T and Distribution Cooperatives

RUS seeks rehearing and clarification of the Commission's determination in Order No. 888–A that, unless stranded costs arise as a result of a section 211 order to a G&T cooperative, G&T cooperatives may not seek (through the Commission) recovery of stranded costs from the customers of their distribution members. RUS argues that the customers of a G&T cooperative's distribution members, as well as the distribution members themselves, meet the Commission's pro forma tariff definition of ''native load customer'' with respect to the G&T. It says that, ''as native load customers, both distribution members and their customers should be responsible to a G&T for stranded costs arising from their use of Commission-required transmission access, or from state mandated retail wheeling.'' [237]

RUS also questions the Commission's assertion that '''to treat a G&T cooperative and its member distribution systems as a single economic unit for stranded cost purposes would be inconsistent with the Commission's decision not to treat cooperatives as a single unit for the purposes of Order No. 888's reciprocity provision.'' [238] RUS asserts that different treatment for different purposes is justified because the relevant issues with respect to the application of the reciprocity requirement on a system-wide basis and the ability to recover stranded costs on a system-wide basis are different. RUS submits that the Commission confuses corporate affiliation with economic integration, and that lack of corporate affiliation does not preclude economic integration. RUS says that although G&T cooperatives and their distribution members are operationally separate, G&T cooperatives and their distribution members function in many ways like a single economic unit. According to RUS, G&Ts undertake an obligation to construct and operate their systems to meet the reliable electric needs of their distribution members and customers of their distribution members, and G&T cooperatives and their members are bound together by long-term requirements contracts.

RUS states that, as single economic units, G&T cooperatives or distribution members both should be able to seek recovery of stranded costs from the customers of distribution members. RUS contends that ''the Commission's reliance on distribution members to seek to recover stranded costs 'through contracts with [their] customers or through the appropriate regulatory authority' is misplaced'' because ''[d]istribution members—many of which are not subject to state commission jurisdiction—may have neither an appropriate regulatory forum through which to seek stranded cost recovery, nor the ability to seek to recover stranded costs incurred by their

[231] *Id.*

[232] As we explained in Order No. 888–A, we declined to include ''exercise of pre-existing contract rights for transmission and designation of wholesale loads'' as an example of a situation for which stranded costs may not be sought because we are not prepared to make individual factual determinations in the context of the Rule. The Commission will address specific requests for stranded cost recovery on the facts presented and the merits of the particular request. FERC Stats. & Regs. ¶ 31,048 at 30,358.

[233] *See* Duquesne Light Company, 79 FERC ¶ 61,116 at 61,520 (1997).

[234] FERC Stats. & Regs. ¶31,048 at 30,440.

[235] Boston Edison at 3.

[236] *See* City of Alma, Michigan, 80 FERC ¶61,265 at 61,961 (1997).

[237] RUS at 16.

[238] *Id.* (citing Order No. 888–A, FERC Stats. & Regs. ¶31,048 at 30,366).

G&T cooperatives to serve native load customers.'' [239]

Finally, RUS argues that failing to permit G&T cooperatives to seek recovery of stranded costs arising from the loss of native load customers due to Commission-required transmission access or the lack of state commission authority to permit stranded cost recovery will result in unduly discriminatory treatment of cooperatives. Where G&T costs are stranded by the ability of customers of distribution members to switch suppliers through Commission-required transmission access, RUS submits that there is a direct nexus between Commission-required access and the stranding of costs. In the case of retail stranded costs, RUS says that many state regulatory authorities do not have the authority under state law to regulate distribution or G&T cooperatives, thereby creating a regulatory gap. RUS states that

> [f]ailure to allow a G&T the opportunity to recover stranded costs caused by [the] departure of any of its native load customers, including both distribution members and the customers of the distribution members, will drastically reduce the G&T's ability to cover its costs, including payments on RUS-financed debt, thereby endangering the existence of the G&T itself and exposing Federal taxpayers to the risk of massive loan defaults.[240]

Commission Conclusion. We will deny RUS' rehearing request. To grant the request would require the Commission to reach beyond its regulatory authority (and allow entities not subject to our sections 205 and 206 jurisdiction an opportunity to recover stranded costs) and would broaden the scope of the Order Nos. 888 and 888–A stranded cost recovery mechanism.[241] Indeed, RUS' rehearing request appears to be based on a misunderstanding of the limited scope of the stranded cost recovery mechanism contained in Order Nos. 888 and 888–A.

The stranded cost recovery provisions in Order Nos. 888 and 888–A apply, in the case of wholesale stranded costs, to public utilities [242] and transmitting utilities.[243] In the case of stranded costs associated with retail wheeling customers, the provisions of the Rule apply only to public utilities.[244] The Commission has limited the opportunity for public utilities and transmitting utilities to seek stranded cost recovery under Order Nos. 888 and 888-A primarily to two discrete situations: (1) costs associated with customers under wholesale requirements contracts executed on or before July 11, 1994 (referred to as ''existing wholesale requirements contracts'') that do not contain an exit fee or other explicit stranded cost provision; and (2) costs associated with retail-turned-wholesale customers (including bundled retail customers of a utility that become bundled retail customers of a new municipal utility).[245]

As the Commission explained in Order No. 888–A, if a cooperative obtains its financing through RUS, it is *not* a public utility subject to our jurisdiction under sections 205 and 206 of the FPA. Although we have no objection to these G&T cooperatives being able to seek cost recovery (including recovery of costs on behalf of their distribution cooperatives) through the appropriate regulatory or contractual channels, this Commission does not have authority to allow them to seek recovery of stranded costs unless they do so in conjunction with transmission access that they are required to provide through a section 211 order. In the latter case, a G&T cooperative that is a transmitting utility could seek recovery of stranded costs if it is ordered to provide transmission services that permit its distribution cooperative to reach another supplier *and* if it had a requirements contract with the distribution cooperative that was executed on or before July 11, 1994 that did not contain an exit fee or other explicit stranded cost provision.[246]

As we also explained in Order No. 888–A, a G&T cooperative that *is* a public utility (a non-RUS financed cooperative) would have to have a jurisdictional wholesale requirements contract with its distribution cooperative in order to be able to seek recovery of stranded costs under Order No. 888's stranded cost recovery provisions. We said that, in the case of a jurisdictional G&T cooperative, the request that the G&T be treated as a single economic unit with the distribution cooperative (such that departure of a distribution cooperative's retail customer would be treated as resulting in stranded costs for the G&T cooperative for which the G&T could seek recovery) is, in effect, a request for recovery of stranded costs from an indirect customer. In Order No. 888–A, we explained why the Commission does not believe it is appropriate or feasible to allow a public utility (or a transmitting utility under section 211 of the FPA) to seek recovery of stranded costs from an indirect customer (*i.e.*, a customer of a wholesale requirements customer of the utility) under the Rule. We indicated that ''[t]he reasonable expectation analysis would apply only to the direct wholesale customer of the utility, not to the indirect customer. It is up to the direct wholesale customer of the utility, through its contracts with its customers or through the appropriate regulatory authority, to seek to recover such costs from its customers.'' [247] We explained that commenters had provided no basis for making an exception in the case of cooperatives. Further, we said that ''to treat a G&T cooperative and its member distribution cooperatives as a single economic unit for stranded cost purposes would be inconsistent with the Commission's decision not to treat cooperatives as a single unit for purposes of Order No. 888's reciprocity provision.'' [248]

[239] *Id.* at 17.

[240] *Id.* at 19.

[241] RUS expresses concern in its rehearing request that distribution members ''may have neither an appropriate regulatory forum through which to seek stranded cost recovery, nor the ability to seek to recover stranded costs incurred by their G&T cooperatives to serve native load customers.'' RUS at 17. However, presumably when a retail customer of a distribution cooperative switches suppliers, the retail customer would still have to use the distribution lines of the distribution cooperative to receive its power. RUS has not explained why the distribution cooperative cannot assess a charge to recover stranded costs when the retail customer uses those lines.

[242] A ''public utility'' is defined under section 201(e) of the FPA as ''any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of sections 210, 211, or 212).'' 16 U.S.C. 824(e).

[243] A ''transmitting utility'' is defined under section 3(23) of the FPA as ''any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.'' 16 U.S.C. 796(23).

[244] As we explained in Order No. 888–A, our decision to entertain (in certain limited circumstances) requests to recover stranded costs associated with retail wheeling customers applies to public utilities only because it is based on our jurisdiction under sections 205 and 206 of the FPA over the rates, terms, and conditions of retail transmission in interstate commerce. FERC Stats. & Regs. ¶ 31,048 at 30,419. Since RUS-financed cooperatives are not public utilities subject to our jurisdiction under sections 205 and 206 of the FPA, we do not have authority to allow them to seek recovery under Order Nos. 888 and 888–A of stranded costs associated with retail wheeling customers.

[245] Whether a G&T cooperative's member distribution cooperatives and the customers of the distribution cooperatives meet the definition of ''native load customer'' under the open access tariff (as RUS submits they do) is not relevant for purposes of the stranded cost recovery mechanism set forth in Order Nos. 888 and 888–A.

[246] FERC Stats. & Regs. ¶31,048 at 30,366.

[247] *Id.*

[248] *Id.* We continue to believe that it would be inconsistent to treat G&T cooperatives and their member distribution cooperatives differently for purposes of the reciprocity condition and stranded

Although RUS refers in its rehearing request to a scenario in which costs may be stranded by the ability of customers of a distribution cooperative to switch suppliers through the use of Commission-required transmission access, the scenario RUS posits is not one for which Order Nos. 888 and 888–A would permit an opportunity for recovery. Because the Commission cannot order retail wheeling, the principal way in which the retail customers of a distribution cooperative could use Commission-required transmission access (and trigger stranded costs on the part of the distribution cooperative) would appear to be through municipalization (*i.e.*, through the creation of a new wholesale entity to obtain power supplies on their behalf in lieu of obtaining power from the distribution cooperative). In such a scenario, however, since the distribution cooperative (if RUS-financed) would not be a Commission-jurisdictional public utility or transmitting utility, it would not be allowed to seek stranded cost recovery under Order Nos. 888 and 888–A.

5. Treatment of Contracts Extended or Renegotiated Without a Stranded Cost Provision

In Order No. 888–A, the Commission clarified that it will consider on a case-by-case basis whether to waive the provisions of 18 CFR 35.26 (which define a ''new wholesale requirements contract'' as ''any wholesale requirements contract executed after July 11, 1994, *or extended or renegotiated to be effective after July 11, 1994*'' (emphasis added)) and treat a contract extended or renegotiated (without adding a stranded cost provision) to be effective after July 11, 1994, but before March 29, 1995, as an existing contract for stranded cost purposes.[249]

Port of Seattle opposes the Commission's decision in this regard. It argues that the Commission in Order No. 888–A sided with Puget on an issue that is being litigated between Port of Seattle and Puget in a separate proceeding (Docket No. ER96–714), and that the Commission improperly prejudiced Port of Seattle by not addressing the concerns expressed by Port of Seattle in the underlying case.[250] It submits that Order No. 888–A was not the forum in which it expected the final decision in Docket No. ER96–714 to be made, and that its procedural rights have been violated. Port of Seattle asks the Commission on rehearing to withdraw any determination, reference or statement in Order No. 888–A that addresses the issues pending in Docket No. ER96–714.

Port of Seattle further argues that the Commission improperly granted Puget an exclusive waiver of (or private exception to) the Rule's definition of ''new'' contracts.

Commission Conclusion. We will deny Port of Seattle's request for rehearing. Port of Seattle misconstrues the scope of the Commission's decision and its effect on the pending proceeding in Docket No. ER96–714–001. The Commission's decision in Order No. 888–A to consider on a case-by-case basis whether to waive the provisions of 18 CFR 35.26 and treat a contract extended or renegotiated to be effective after July 11, 1994, but before March 29, 1995, as an existing contract for stranded cost purposes does *not* constitute a ruling on the merits in the pending proceeding in Docket No. ER96–714–001. In Order No. 888–A, the Commission has gone no further than to state that the matter should be considered on a case-by-case basis, and to acknowledge that the issue, as between Puget and Port of Seattle, is pending in Docket No. ER96–714–001.[251] Contrary to Port of Seattle's claim, Order No. 888–A does not grant Puget a waiver of the Rule's definition of ''new wholesale requirements contract.''

6. Customer Expectations of Continued Service at Below-Market Rates

TDU Systems seeks rehearing of the Commission's decision not to adopt a generic mechanism to allow existing requirements customers with below-market rates a means to continue to receive power beyond the contract term at the pre-existing contract rate if the customer had a reasonable expectation of continued service. TDU Systems states that the Commission's decision rests on the conclusion that, even if customers generally expected to stay on a supplier's system beyond the contract term, it is not likely that most customers could have expected to continue service at the existing rate. TDU Systems maintains that this finding rests on a false distinction between the rate the wholesale requirements customer reasonably could have expected to pay and the rate the wholesale requirements seller reasonably could have expected to collect. It says that neither stranded costs nor ''stranded benefits'' [252] arise from a right to, or expectation of, a grandfathered rate. TDU Systems contends that ''stranded benefits'' arise because, prior to open access transmission, wholesale requirements customers had a reasonable expectation of continuing to receive wholesale service at just and reasonable cost-based rates. It argues that when open access transmission allows the supplier to charge a higher market-based rate instead, the customer's expectation of continued cost-based service is destroyed, and the customer may lose the benefits it had under the prior regulatory regime.

TDU Systems submits that while Order No. 888-A suggests that customers could not reasonably expect to continue paying their existing rate, the revenues lost approach to quantifying stranded costs assumes that sellers reasonably expected to continue collecting a cost-based rate equal to the existing rate. TDU Systems says that the Commission's best estimate of the seller's lost revenue from a wholesale requirements contract is based on the seller's existing, cost-based, just and reasonable rate—the same existing cost-based rate that the Commission in Order No. 888–A finds the captive requirements customer had no reasonable expectation of continuing to pay. TDU Systems says these findings directly contradict one another.[253]

TDU further challenges the Commission's statement that ''it is not clear'' that the customer could show it reasonably expected continued service ''at the existing contract rate (which may be below the market price)'' because the utility might have filed changed rates during the contract term or sought new rates at the end of the contract term. TDU Systems submits that before open access, established Commission policy would only have allowed the monopoly utility to charge its captive wholesale requirements

cost recovery, notwithstanding RUS' argument to the contrary.

[249] FERC Stats. & Regs. ¶ 31,048 at 30,396.

[250] Port of Seattle at 7. Port of Seattle also contends that the Commission mischaracterized Port of Seattle's position when it referred to Puget's statement that the parties were working within the context of the stranded cost NOPR, which provided that the utility had three years from the date of the publication of the final rules to negotiate or file for stranded cost recovery. Port of Seattle says its assumption and position was that Puget made the business decision not to include a stranded cost or exit fee provision in its letter agreement, thus preventing its recovery of any stranded costs. *Id.* at 8.

[251] We note that a certification of an uncontested offer of settlement in that proceeding is pending before the Commission.

[252] TDU Systems uses the term ''stranded benefits'' to refer to the benefits to a wholesale requirements customer that may be lost if ''open access transmission forces [the customer] to buy power at market-based rates'' instead of at cost-based rates. TDU Systems at 25.

[253] *Id.* at 27–28.

customer a cost-based rate, whether that rate was above or below market price.[254]

TDU Systems asks the Commission to adopt a generic mechanism to allow customers to demonstrate and recover their stranded benefits, just as it has done for the recovery of utility stranded costs. If the Commission is unwilling to promulgate such a generic rule, TDU Systems asks that the Commission clarify the standard that a customer must meet in seeking relief under section 206. It says that although Order No. 888-A states that a customer may file a petition under section 206 ''to show that the contract should be extended at the existing contract rate,'' the issue is not whether to extend a contract at the existing rate, but whether to continue requirements service at a cost-based rate. It asks the Commission to correct its description in Order No. 888–A of the standard the customer must meet in a case-by-case proceeding and the relief the Commission would provide.

Commission Conclusion. As discussed below, we will deny TDU Systems' request for rehearing on this issue, but will grant, in part, its request for clarification.

In Order No. 888–A, the Commission rejected TDU Systems' request that the Commission provide a generic mechanism to allow existing requirements customers a means to continue to receive power beyond the contract term at the pre-existing contract rate if the customer had a reasonable expectation of continued service. The Commission noted that TDU Systems had requested that the customer be given the choice of extending its existing contract at existing rates for a period corresponding to the customer's expectation of continued service or receiving a ''stranded benefits'' payment from the utility consisting of the difference between what the customer must pay for new supplies and what it paid under the contract.[255] We concluded that we did not have a sufficient basis on which to make generic findings or provide a generic formula for addressing this issue:

> Utilities' expectations may have resulted in millions of dollars of investments on behalf of certain customers and the possibility of shifting the costs of those investments to other customers that did not cause the costs to be incurred. In the case of customers' expectations, however, even if customers generally expected to stay on a supplier's system beyond the contract term, it is not likely that most customers could have expected to continue service *at the existing rate* unless specified in the contract. Moreover, the consequences of customers' expectations as a general matter would not have the potential to shift significant costs to other customers.[256]

At the same time, however, we indicated that a customer under a contract may exercise its procedural rights under section 206 of the FPA to show that the contract should be extended at the existing contract rate. We noted that the customer also may make such a showing in the context of a utility's proposed termination of a contract pursuant to the § 35.15 notice of termination (approval) requirement, which the Commission has retained for power supply contracts executed prior to July 9, 1996 (the effective date of Order No. 888).

TDU Systems has not persuaded us that our decision to address this issue on a case-by-case, not a generic, basis is in error. Notwithstanding TDU Systems' arguments, we continue to believe that the extent to which a customer could demonstrate a reasonable expectation of continued service at the existing contract rate (or at a cost-based rate, if that was the customer's expectation) is best addressed on a case-by-case basis. As we explained in Order No. 888–A, we do not intend to prejudge whether a requirements customer could ever make such a showing, nor do we intend to preclude a customer from attempting to make such a showing in appropriate circumstances.

In response to TDU Systems' request that the Commission clarify the standard that a requirements customer must meet in seeking relief under section 206, we clarify that a customer may exercise its procedural rights under section 206 to show *either* that the contract should be extended at the existing contract rate or, as TDU Systems suggests, that the contract should be extended at a cost-based rate. However, the relief that the Commission would provide in such a case is a matter that is more appropriately determined on a case-by-case basis based on the particular facts and circumstances.

7. Miscellaneous

IL Com seeks rehearing of the following sentence in Order No. 888–A: ''It was not unreasonable for the utility to plan to continue serving the needs of its wholesale requirements customers *and retail customers,* and for those customers to expect the utility to plan to meet their needs.''[257] IL Com objects that this sentence prejudges the reasonable expectation issue.[258] It asks that the Commission withdraw the quoted sentence in full or, at a minimum, withdraw the reference to retail customers in the quoted sentence.

IL Com also seeks clarification of the Commission's statement in Order No. 888–A that ''[i]f a former wholesale requirements customer *or a former retail customer* uses the new open access to reach a new supplier, the utility is *entitled* to seek recovery of legitimate, prudent and verifiable costs that it incurred under the prior regulatory regime to serve that customer.''[259] IL Com asks the Commission to withdraw the words ''or a former retail customer'' from this sentence and to clarify that it is not prejudging utilities' entitlement to retail stranded cost recovery and is not imposing a ''legitimate, prudent and verifiable'' standard for the recovery of retail stranded costs.[260]

Commission Conclusion. The Commission statements that are the subject of IL Com's request for rehearing initially appeared in Order No. 888[261] and were repeated in Order No. 888–A's summarization of Order No. 888. IL Com's request for rehearing with respect to these statements should have been raised on rehearing of Order No. 888 and therefore was not timely filed. However, we clarify that while we will not withdraw our statements, the statements are not intended to prejudge the reasonable expectation issue as it might apply to any state proceedings on retail stranded costs.

V. Environmental Statement

In Order No. 888–A, the Commission denied requests for rehearing on eight categories of issues relating to the Commission's analysis of environmental issues. No rehearing requests were filed concerning Order No. 888–A's analysis of environmental issues.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[262] requires rulemakings to either contain a description and analysis of the effect that the proposed or final rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities. In Order No. 888, the Commission certified that the Open Access and Stranded Cost Final Rules would not impose a significant economic impact on a substantial number of small entities. In

[254] *Id.* at 28–29

[255] FERC Stats. & Regs. ¶31,048 at 30,391.

[256] *Id.* at 30,393 (emphasis in original),

[257] *Id.* at 30,351 (emphasis added by IL Com).

[258] IL Com at 9–10.

[259] FERC Stats. & Regs. ¶31,048 at 30,351 (emphasis added by IL Com).

[260] IL Com. at 10–11.

[261] *See* FERC Stats. & Regs. ¶31,036 at 31,789.

[262] 5 U.S.C. 601–612.

Order No. 888–A, the Commission addressed requests for rehearing that questioned this certification and that the final rule would not impose a significant economic impact on a substantial number of small entities. No rehearing requests of Order No. 888–A were filed on this issue and the Commission finds no reason to alter its previous findings on this issue.

VII. Information Collection Statement

Order No. 888 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB). [263] Given that this order on rehearing makes only minor revisions to Order Nos. 888 and 888–A, none of which is substantive, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB, for informational purposes only.

The information reporting requirements under this order are virtually unchanged from those contained in Order Nos. 888 and 888–A. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395–3087].

VIII. Effective Date

The tariff change to Order Nos. 888 and 888–A made in this order on rehearing (see footnote 1) will become effective on February 9, 1998. The current requirements of Order Nos. 888 and 888–A will remain in effect until this order becomes effective.

By the Commission.

Lois D. Cashell,

Secretary.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—Order No. 888–B: List of Petitioners

1. American Public Power Association, Colorado Association of Municipal Utilities, Municipal Electric Systems of Oklahoma, and Utah Associated Municipal Power Systems (APPA) [1]
2. Bonneville Power Administration (BPA)
3. Arizona Public Service Company (Arizona)
4. Boston Edison Company, Central Vermont Public Service Corporation, Florida Power Corporation, Montaup Electric Company, and Wisconsin Public Service Corporation (Boston Edison)
5. Coalition for a Competitive Electric Market (CCEM) [2]
6. Central Maine Power Company (Central Maine)
7. Coalition for Economic Competition (Coalition for Economic Competition) [3]
8. Colorado Association of Municipal Utilities (CAMU)
9. Dairyland Power Cooperative (Dairyland)
10. Edison Electric Institute (EEI) [4]
11. Illinois Commerce Commission (IL Com)
12. Kansas City Power & Light Company (KCPL)
13. Metropolitan Edison Company (Met Ed)
14. National Association of Regulatory Utility Commissioners (NARUC)
15. National Rural Electric Cooperative Association (NRECA)
16. New England Power Pool Executive Committee (NEPOOL)
17. Public Service Commission of the State of New York (NY Com) [5]
18. Niagara Mohawk Power Corporation and PURPA Reform Group (NIMO) [6]
19. Otter Tail Power Company (Otter Tail)
20. Puget Sound Energy, Inc. (Puget) [7]
21. Rural Utilities Service, USDA (RUS)
22. Port of Seattle (Port of Seattle)
23. Soyland Power Cooperative, Inc. (Soyland)
24. Transmission Access Policy Study Group and certain of its Members (TAPS) [8]
25. Transmission Dependent Utility Systems (TDU Systems) [9]

[263] The OMB control number for this collection of information is 1902–0096.

[1] APPA filed its request for rehearing out-of-time on April 4, 1997. As discussed in Order No. 888–B, the Commission is accepting this pleading as a motion for reconsideration.

[2] CNG Energy Services Corp., Coastal Electric Services Company, Destec Power Services, Inc., Enron Power Marketing, Inc., Koch Energy Trading, Inc., NorAm Energy Services, Inc., and Vitol Gas & Electric Services, Inc.

[3] General Public Utilities Corp., Illinois Power Co., Long Island Lighting Co., and New York State Electric & Gas Corp.

[4] EEI filed its request for rehearing out-of-time on April 4, 1997. As discussed in Order No.888–B, the Commission is accepting this pleading as a motion for reconsideration.

[5] Independent Power Producers of New York, Inc. (NY IPPs) filed an answer on April 11, 1997.

[6] Granite State Hydropower Association filed an answer on April 21, 1997.

[7] Formerly Puget Sound Power & Light Company.

[8] American Municipal Power-Ohio, Inc., Illinois Municipal Electric Agency, Indiana Municipal Power Agency, Littleton Electric Light Department, Massachusetts Municipal Wholesale Electric Company, Michigan Public Power Agency, Municipal Energy Agency of Mississippi, Municipal Energy Agency of Nebraska, New Hampshire Electric Cooperative, Inc., Northern California Power Agency, Virginia Municipal Electric Association No. 1, on behalf of itself and its members (City of Franklin, City of Manassas, Harrisonburg Electric Commission, Town of Blackstone, Town of Culpepper, Town of Elkton, and Town of Wakefield), and Wisconsin Public Power, Inc. The operating companies of the American Electric Power System (AEP) filed an answer on April 17, 1997.

[9] Arkansas Electric Cooperative Corporation, Golden Spread Electric Cooperative, Inc., Holy Cross Electric Association, Kansas Electric Power Cooperative, Inc., Magic Valley Electric Cooperative, Inc., Mid-Tex Generation and Transmission Electric Cooperative, Inc., North Carolina Electric Membership Corporation, Oklahoma Municipal Power Authority, Old Dominion Electric Membership Corporation, and Seminole Electric Cooperative, Inc.

(Name of Transmission Provider) Open Access Transmission Tariff Original Sheet No.

Revision to Pro Forma Open Access Transmission Tariff Pursuant to Order No. 888–B

Appendix B

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 file a proposed unexecuted Service Agreement with the Commission, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G, *or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement.*

[FR Doc. 97–31841 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95–9–002; Order No. 889–B]

Open Access Same-Time Information System and Standards of Conduct

Issued November 25, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final order; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying the requests for rehearing of its order on rehearing of the final rule in this proceeding. The final rule required public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to create or participate in an Open Access Same-Time Information System (OASIS) in conformance with Commission regulations. The final rule also required

those public utilities to implement standards of conduct to functionally separate transmission and wholesale merchant functions. The order on rehearing made minor revisions to the final rule and implemented a revised transmission discounting policy. This order denies the requests for rehearing filed by six interested persons in response to the order on rehearing of the final rule.

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283.

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0849.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

Order Denying Rehearing of Order No. 889–A

Issued November 25, 1997.

I. Introduction

In this order, we deny the requests for rehearing of Order No. 889–A, our order on rehearing of Order No. 889.[1]

II. Background

In Order No. 889–A, the Commission addressed over 40 requests for rehearing of Order No. 889 and affirmed the major findings made therein. We did, however, make certain minor revisions to fine-tune the regulations at 18 CFR Part 37 and to implement a revised transmission discounting policy that we adopted and described in detail in Order No. 888–A, our order on rehearing of Order No. 888.[2]

The revised transmission discounting policy necessitated a number of changes to the Standards of Conduct and to the Open Access Same-Time Information (OASIS) posting requirements in 18 CFR Part 37. These were:

(1) Deleting §§ 37.4(b)(5)(v) and 37.4(b)(5)(vi);

(2) Adding a provision at § 37.6(c)(3) to require, among other things, that any offer of a discount for basic transmission service must be announced to all potential customers solely by posting on the OASIS;

(3) Revising § 37.6(c)(4) to no longer treat the posting of transmission service transactions involving the Transmission Provider's (or any affiliate's) generation merchant function any differently from the posting of transactions involving non-affiliates except that transactions involving the Transmission Provider's wholesale merchant function or affiliates must be identified;

(4) Adding a provision at § 37.6(d)(2) to require, among other things, that any offer of a discount for ancillary service provided by the Transmission Provider in support of its provision of basic transmission service must be announced to all potential customers solely by posting on the OASIS;

(5) Revising § 37.6(d)(3) on ancillary services to be consistent with our revision to § 37.6(c)(4);

(6) Revising § 37.6(e)(1)(I) to require that, except for next-hour service, requests for transmission and ancillary service must be posted prior to the Transmission Provider responding to these requests;

(7) Adding a provision, at § 37.6(e)(1)(ii), that during Phase I, while requests for next-hour service need to be posted on the OASIS as soon as possible and in any event within one hour of receiving the request, they need not be posted on the OASIS prior to being acted on;

(8) Adding a provision, at § 37.6(e)(1)(iii), that provides that in the event that a discount is being requested for ancillary services that are not in support of the Transmission Provider's provision of basic transmission service, such a request need not be posted on the OASIS;

(9) Expanding, in § 37.6(e)(1)(iv), the information required to be posted on the status of requests for transmission and ancillary service; and

(10) Deleting the provision, formerly found in § 37.6(e)(1)(iii) and the revised § 37.6(e)(3)(I), to disallow masking the identity of parties to transactions.

We also made nine minor revisions in Order No. 889–A to the regulations in 18 CFR Part 37 that were unrelated to our revised transmission discounting policy. These were:

(1) Amending the definition of ''wholesale merchant function'' in § 37.3(e);

(2) Amending §§ 37.4(b)(5)(iii) and 37.6(g)(4) to require Transmission Providers to post on the OASIS the information that they already were required to keep, detailing the circumstances and manner in which they exercise their discretion under any terms of the tariff;

(3) Substituting the phrase ''sales made to any person for resale made by the wholesale merchant function or any affiliate'' for the phrase ''wholesale purchases or sales made on behalf of its own power customers, or those of an affiliate'' in § 37.4(b)(5)(iv), to be consistent with the revised definition of ''wholesale merchant function'';

(4) Amending § 37.6(b)(1) to clarify the meaning of the term

[1] Open Access Same-Time Information System and Standards of Conduct, *Final Rule*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, 61 FR 21737 (May 10, 1996), *Order on Reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049, 62 FR 12484 (March 14, 1997).

[2] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, *Final Rule*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 61 FR 21540 (May 10, 1996), *Order on Reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, 62 FR 12274 (March 14, 1997).

''interconnection'' as used in the definition of ''posted path'';

(5) Amending § 37.6(b)(3)(ii) to clarify that firm available transmission capability (ATC) and nonfirm ATC for unconstrained posted paths must be separately posted;

(6) Amending § 37.6(e) to clarify that the provision applies to requests for ancillary service and that requests for service must be posted before the Transmission Provider responds to the request;

(7) Amending § 37.6(g)(3) to require that notices of transfers of personnel posted on the OASIS, as described in § 37.4(b)(2), remain available for the same time period as audit information in § 37.7(b);

(8) Amending § 37.7(b) to shorten, from 90 days to 20 days, the time during which ATC/total transmission capability (TTC) postings must remain available for download on the OASIS (the data will, however, remain available upon request for three years from the date when they are first posted); and

(9) Deleting § 37.8, because the compliance date for Part 37 had already passed.

In response to the issuance of Order No. 889–A, requests for rehearing were filed by six interested persons.[3]

III. Public Reporting Burden

This order on rehearing makes no changes to Order No. 889–A or the regulations found at 18 CFR Part 37. Consequently, the public reporting burden associated with issuance of this order is unchanged from what we estimated when we issued Order Nos. 889 and 889–A. The Commission has conducted an internal review of this conclusion and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by Order Nos. 889 and 889–A, as clarified by this order on rehearing, and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.

Persons wishing to comment on the collections of information required by this order on rehearing should direct their comments to the Desk Officer for FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile 202–395–7285. Comments must be filed with the Office of Management and Budget within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Michael Miller, 202–208–1415.

IV. Discussion

The rehearing requests collectively raise four major issues. We will deny rehearing on each of these issues as discussed below.

A. Section 37.1—Applicability

The Commission's Waiver Policy

In Order Nos. 888 and 889, the Commission determined that requests for waiver would be better decided on a case-by-case basis so that the Commission could evaluate them based on individual circumstances, rather than as part of a generic rulemaking.[4] In Order No. 889, we stated that the Commission would develop, in the context of individual adjudications, a mechanism that would allow small public utilities to seek a waiver of some or all of the Open Access requirements, including the requirements to establish and/or participate in an OASIS and to develop Standards of Conduct. This same waiver mechanism was made applicable to small non-public utilities seeking waiver from all or part of the reciprocity condition.

Consistent with this approach, the Commission, in Order Nos. 888–A and 889–A, recounted the waiver standards enunciated by the Commission in a series of orders dealing with companies' specific requests for waiver of all or some of the requirements of Order Nos. 888 and 889, and declined to revise the standards established in those case-by-case determinations.[5]

Additionally, in Order No. 889–A, the Commission recited the arguments raised in the requests for rehearing of the Commission's waiver policy as it related to the Commission's OASIS and Standard of Conduct requirements under Order No. 889. The Commission explained that, in a series of orders, it had developed waiver criteria that took into account potential burdens on small entities and at the same time balanced the need to prevent undue discrimination and affiliate abuse in interstate power markets, and that this flexible waiver approach adequately addressed the concerns raised on rehearing. The Commission concluded that an order on rehearing of a final rulemaking was not the proper vehicle for a company to request a company-specific waiver or to challenge the Commission's waiver policy. It further explained that waivers are appropriately addressed on a case-by-case basis, which permits the Commission to review the specific facts of each waiver application and permits affected parties to intervene and make their views known to the Commission.[6]

Rehearing Requests. On rehearing, NRECA argues that the Commission should modify its waiver policy so that waivers terminate upon issuance of a Commission order, and not upon the filing of a complaint or request for service.[7] NRECA argues that a waiver should be terminated not when an entity files a complaint, but when the Commission issues an order finding that the complaint has merit.[8]

This same basic argument is also made by TDU Systems.[9] TDU Systems argues that the Commission's current waiver policy makes a waiver a ''mirage'', terminable by a baseless complaint made solely to drive up a competitor's costs by triggering

[3] Requests for rehearing of Order No. 889–A were filed by Coalition for a Competitive Electric Market (CCEM), National Rural Electric Cooperative Association (NRECA), Transmission Access Policy Study Group (TAPS), and Transmission Dependent Utility Systems (TDU Systems). In addition, requests for rehearing of Order No. 889–A nominally were filed by Puget Sound Energy, Inc. (Puget Sound) and by the United States Department of Agriculture (USDA), although these rehearing requests raise no specific issues related to Order No. 889–A.

[4] *See* Order No. 888, FERC Stats. & Regs. at 31,854, Order No. 889, FERC Stats. & Regs. at 31,596.

[5] *See* Order No. 888–A, FERC Stats. & Regs. at 30,293 and 30,332–34, Order No. 889–A, FERC Stats. & Regs. at 30,554–55. We did, however, in Order No. 888–A, provide some clarification of the Commission's waiver policy. *See* FERC Stats. & Regs. at 30,334.

[6] *See* Order No. 889–A, FERC Stats. & Regs. at 30,555.

[7] At the time of NRECA's rehearing, the Commission's policy on the expiration of waivers provided that

[w]aiver of the requirement to establish and maintain an information system (*i.e.*, an OASIS) will be granted unless and until an entity evaluating its transmission needs complains that it could not get information necessary to complete its evaluation. Waiver of the standards of conduct will be granted unless and until an entity complains that a public utility has used its access to information about transmission to unfairly benefit the public utility's own or the public utility's affiliates' sales. Compliance must be made within 60 days of the complaint.

Order No. 889–A, FERC Stats. & Regs. at 30,555 and Black Creek Hydro, Inc., *et al.*, Order on Reh'g and Granting Waivers of Order No. 889, 77 FERC ¶ 61,232 at 61,941 (1996).

[8] NRECA Rehearing Request at p. 11.

[9] TDU Systems Rehearing Request at pp. 10–12.

unnecessary compliance with the OASIS and Standards of Conduct requirements.[10] Moreover, TDU Systems argues that such a complaint, terminating a waiver of Order No. 889 requirements, should be based on a ''good faith'' request for transmission service and a prima facie case that adequate information about a respondent's transmission service is unavailable, or that preferential treatment is being given to the respondent's wholesale merchant function.[11]

Commission Conclusion. In a company-specific order issued subsequent to the date of NRECA's and TDU Systems' rehearing requests, the Commission modified its waiver policy in the manner requested by the two parties.[12] Specifically, the Commission has reconsidered its policy of automatically revoking waivers of the requirements of Order No. 889 on the filing of a complaint and has determined that, henceforth, waivers will remain effective until the Commission takes action in response to a complaint.

B. Sections 37.3 (Definitions) and 37.4 (Standards of Conduct)

Definition of ''Wholesale Merchant Function'' and Employees Engaged in Wholesale Purchases for Bundled Retail Customers

In Order No. 889, in § 37.6(e), the Commission defined the ''wholesale merchant function'' as the ''sale for resale, *or purchase for resale*, of electric energy in interstate commerce.'' [Emphasis added]. On rehearing of Order No. 889, Consolidated Edison Company of New York, Inc. (ConEd) argued that the Commission had exceeded its authority by requiring ''transmission providers to functionally separate interstate electricity transmission and wholesale merchant functions (wholesale sales and purchases of electricity in interstate commerce).'' [13] ConEd asserted that wholesale purchases of electricity in interstate commerce on behalf of native load customers are bundled retail electric service transactions that are local distribution and not subject to the Commission's authority.

In Order No. 889–A, we considered ConEd's argument and stated as follows:

> We agree with ConEd to the extent that when a utility uses its own transmission system to transmit purchased power to retail load customers we have no jurisdiction over the transmission that is included in the bundled sale of power to the retail native load. Upon further consideration, we conclude that our definition of ''wholesale merchant function'' (in § 37.3(e)) should be modified to delete the phrase, ''* * *, or purchase for resale, * * * *'' because this clause creates confusion and is not necessary.[14]

We explained that when a utility purchases power for its retail native load customers, this is not a sale for resale. We further explained that,

> [i]n contrast, when a utility purchases power for its wholesale native load, the transmission of purchased power to the wholesale customer is really part of a transaction that includes a wholesale sale of power to a third party.[15]

In Order No. 889–A, the Commission also explained that the Standards of Conduct do not mandate that Transmission Providers assign employees making purchases on behalf of bundled retail customers to the group performing wholesale merchant functions. Specifically, we stated:

> The standards of conduct's separation of functions currently prohibit a Transmission Provider's employees engaged in transmission system operations and reliability functions from giving preference to wholesale purchases or sales made on behalf of its own wholesale customers or those of affiliates. The standards of conduct do not, however, dictate whether bundled retail merchant functions are to be grouped with the wholesale merchant function or with the transmission operations and reliability function.
>
> Thus, FIT Utilities' request to allow dispatchers to buy power to serve retail load is consistent with the regulations. As discussed above, the regulations do not prohibit Transmission Providers from assigning the responsibility for making purchases to serve bundled retail customers to the transmission operations and reliability function.

Rehearing Requests. On rehearing, CCEM argues that the Commission erred by modifying the definition of ''wholesale merchant function'' and by revising provisions of the Standards of Conduct to exempt transmission service provided in conjunction with a Transmission Provider's wholesale purchases for bundled retail sales.[16] CCEM also argues that the Commission erred when it found that it lacks jurisdiction over transmission service that is bundled with the sale of power to a utility's retail native load.[17] It argues that artificial distinctions between wholesale and retail transactions should be avoided. CCEM further argues that the Commission should insist that all transmission providers and customers face the same unbundled market.

Similarly, TAPS argues that the Commission's change in the definition of ''wholesale merchant function'' unwisely narrows the scope of the Standards of Conduct rules.[18] TAPS further argues that a Transmission Provider's use of its own transmission system to make wholesale purchases for bundled retail load should not be exempted from functional unbundling and functional separation requirements.[19] TAPS argues that the Commission erred by watering down the functional unbundling requirements in the Standards of Conduct by excluding wholesale purchases for bundled retail customers from the requirement to functionally unbundle.

Commission Conclusion. Nothing in the rehearings convinces us to modify the definition of ''wholesale merchant function'' or to otherwise modify our decision on this issue reached in Order No. 889–A. However, we will repeat here certain clarifications we have made in response to similar arguments made in requests for rehearing of Order No. 888–A.

Although we reiterate our view that the Commission does not have jurisdiction over the rates, terms and conditions of *bundled* retail service, as a practical matter, we do not believe that it is possible to divide a *single* power purchase made on behalf of both wholesale and retail native load such that the transmission provider takes service under the open access non-rate terms and conditions for the part of the purchase that goes to wholesale native load, but takes service under different terms and conditions for the part of the purchase that goes to retail native load. Because the power purchase transaction (including the delivery across the transmission provider's system to both wholesale and retail customers) is indivisible, and because the transmission of the purchased power to the wholesale native load customer must be done pursuant to the open access tariff, this means that the entire transaction *de facto* must be pursuant to the non-rate terms and conditions of the tariff.

Concerning the Standards of Conduct requirement that public utilities separate their *wholesale* power marketing functions from their

[10] TDU Systems Rehearing Request at p. 11.

[11] TDU Systems Rehearing Request at p. 12.

[12] Central Minnesota Municipal Power Agency, *et al.*, Order on Requests for Disclaimer of Jurisdiction and for Waiver of Order Nos. 888 and 889, 79 FERC ¶ 61,260 at 62,127 (1997).

[13] ConEd Rehearing Request of Order No. 889 at p. 2.

[14] FERC Stats. & Regs. at 30,552.

[15] *Id.*

[16] CCEM Rehearing Request at pp. 5–6.

[17] CCEM Rehearing Request at p. 5.

[18] TAPS Rehearing Request at pp. 3–5.

[19] TAPS Rehearing Request at pp. 3–5.

transmission operations, the Commission did not require separation of the *retail* power marketing function because the state has jurisdiction over retail power marketing and over bundled retail transmission. However, here too we believe further clarification is necessary. First, the public utility has no choice pursuant to Order Nos. 888 and 888–A but to separate its wholesale power marketing function (including power purchase transactions made by the marketing function on behalf of wholesale native load) from the transmission operations function. This means that those persons in the company that are involved in wholesale power purchases as well as wholesale sales cannot interact with the transmission personnel other than through the OASIS. Thus, to the extent they are making purchases on behalf of wholesale as well as bundled retail native load as part of a single purchase, they will have to abide by the separation of function requirement. As discussed above, such a purchase is not divisible. Additionally, it is conceivable that there could be a separate retail marketing function for native load and a separate wholesale marketing function for native load. If a challenge is made to the way a utility organizes its functions, then the utility bears the burden of demonstrating that it is maintaining a separate staff to perform retail marketing functions. Furthermore, in such cases, it would clearly be inappropriate for the retail staff to share transmission information with the wholesale marketing staff.

C. Section 37.6—Information To Be Posted on an Oasis

Transmission Discounting Policy

In Order No. 889–A, we explained that the Commission was adopting a revised discounting policy in Order No. 888–A that necessitated changes to the OASIS and Standards of Conduct regulations found in 18 CFR Part 37. These changes entailed three principal requirements.

First, any offer of a discount for transmission and/or ancillary services made by the Transmission Provider must be announced to all potential customers solely by posting on the OASIS.

Second, any customer-initiated requests for discounts of transmission and/or ancillary services must occur solely by posting on the OASIS, regardless of whether the customer is the Transmission Provider's wholesale merchant function, an affiliate, or a non-affiliate.

Third, once the Transmission Provider and customer agree to a discounted transaction for transmission and/or ancillary services, the details immediately must be posted on the OASIS. This requirement is equally applicable regardless of whether the customer is the Transmission Provider's wholesale merchant function, an affiliate, or a non-affiliate.

Rehearing Request. On rehearing, TAPS argues that the Commission's policy on transmission discounting should be modified to minimize the potential for self dealing and other abuses.[20] Specifically, TAPS argues that the Commission's revised discounting policy in Order No. 888–A, by allowing delivery point-specific discounts, offers a means for transmission providing utilities to offer each other reciprocal discounts, while requiring transmission dependent utilities to pay full freight. TAPS argues that if a transmission provider offers a discount to itself or any other transmission user, the transmission provider should be required to offer the discount either on all unconstrained paths, or, at a minimum, to all delivery points in the same unconstrained portion of the transmission provider's transmission system and to other similarly situated customers. TAPS argues that there is no justification for a transmission provider to refuse to offer a discount to delivery points located along the same electrical path as the discounted transaction.[21]

Commission Conclusion. In Order No. 888-B, being issued concurrently with this order, the Commission has considered various requests for rehearing of the discounting policy announced in Order Nos. 888-A and 889-A. Among these requests for rehearing is that submitted by TAPS, wherein TAPS raises the same discounting issue as that raised in its request for rehearing of Order No. 889-A.[22]/ As we are denying rehearing of this issue in Order No. 888-B, for the reasons discussed therein, we similarly deny rehearing of this issue in this order.

As we explain in Order No. 888-B, the revised discounting policy announced in Order No. 888-A is the result of a careful balancing of incentives to operate the transmission grid efficiently while ensuring that the grid is not operated in an unduly discriminatory manner. After a review of the requests for rehearing, the Commission concludes, in Order No. 888-B, that it properly balanced these concerns in Order No. 888-A. For this reason, the Commission denies the requests for rehearing of this issue in Order No. 888-B, and we do the same here.

D. Section 37.6—Information to be Posted on an Oasis

Deletion of Masking Provision

In Order No. 889-A, the Commission deleted § 37.6(e)(1)(iii) and revised § 37.6(e)(3)(I) to remove provisions that directed Transmission Providers posting transmission service requests on the OASIS to honor requests from parties to transactions to mask their identities during the negotiating period and for 30 days from the date when the request for service was accepted, denied, or withdrawn. The Commission deleted the masking provision in response to certain arguments raised on rehearing of Order No. 889 and to implement the discounting policy announced in Order No. 888-A.

Rehearing Request. CCEM argues that the Commission erred by eliminating the customer identity/transaction masking provision.[23] CCEM contends that this revision was not based on reasoned decision-making. CCEM argues that by revealing a transmission requester's identity, competitors—particularly public utilities with captive native loads—can learn commercially sensitive information that will allow them to misappropriate the service requester's marketing efforts and transactions. CCEM argues that this is a larger problem than it was previously because the Commission has now expanded the information to be posted on the status of requests for transmission and ancillary services to include information about: (1) points of delivery and receipt; (2) length and type of service; and (3) identification of ancillary service transactions associated with a transmission service transaction.

CCEM also argues that eliminating the 30-day masking provision allows the Standards of Conduct to be undercut by allowing wholesale merchant employees to obtain market information in a manner giving them an advantage over unaffiliated marketers. CCEM does not agree that masking inhibits market participants from making informed choices and notes that all relevant information except a requester's identity already would be available. CCEM argues that a requester's identity is neither critical nor important to a competitor pursuing ''its own interests''.

Commission Conclusion. We find CCEM's arguments unpersuasive. While

[20] TAPS Rehearing Request at pp. 5–6.

[21] TAPS Rehearing Request at p. 6.

[22] TAPS Rehearing Request of Order No. 888-A at pp. 17–20.

[23] CCEM Rehearing Request at pp. 2–5.

CCEM makes much of the so-called ''uneven playing field'' that it allegedly will endure without the masking provision, we find this concern to be unfounded. The Order No. 889 version of §§ 37.6(e)(1)(iii) and 37.6(e)(3)(I) treated all market participants making a request for transmission service (or whose transactions were curtailed or interrupted) equally, by allowing parties to such transactions to mask their identities for thirty days, upon request. The current (Order No. 889-A) version treats all market participants making a request for transmission service (or whose transactions are curtailed or interrupted) equally, by requiring the identity of parties to such transactions to be posted. Although the Commission has revised its policy on masking, all market participants making a request for transmission service, whether affiliated or non-affiliated with the Transmission Provider are treated equally in both instances. Thus, under the revised rule, the playing field is just as level as before.

Moreover, we are not persuaded that eliminating the masking provision will have the dire anticompetitive consequences that CCEM predicts. To the contrary, we continue to believe that fuller disclosure of customer and transaction information is necessary to implement the discounting provisions added by Order Nos. 888–A and 889–A and to ensure that customers (actual or potential) are able to detect any affiliate abuse or undue discrimination.

If actual experience proves different, CCEM or other interested persons may bring these facts to our attention and we will consider taking appropriate remedial action.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[24] requires any proposed or final rule issued by the Commission to contain a description and analysis of the impact that the proposed or final rule would have on small entities or to contain a certification that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Order No. 889 contained a certification under section 605(b) of the RFA that the OASIS Final Rule would not impose a significant economic impact on a substantial number of small entities within the meaning of the RFA.[25]

Given that Order No. 889–A made only minor revisions to Order No. 889, none of which was substantive, that this order makes no revisions to Order No. 889–A, and that we are granting waivers from the requirements of the OASIS Final Rule to small entities where appropriate, we reaffirm our earlier certification in Order Nos. 889 and 889–A that the requirements in 18 CFR Part 37, to establish and participate in an OASIS and to comply with the Standards of Conduct, will not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

VI. Environmental Statement

As explained in Order Nos. 888–A and 889–A, Order Nos. 888 and 889 were the joint subjects of the Final Environmental Impact Statement issued in the Open Access NOPR proceeding in Docket Nos. RM95–8–000 and RM94–7–001 on April 12, 1996. Given that this order makes no revisions to Order No. 889–A, no separate environmental assessment or environmental impact statement has been prepared in this proceeding.

VII. Information Collection Statement

As explained in Order Nos. 889–A, Order No. 889 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).[26] Given that Order No. 889–A made only minor revisions to Order No. 889, none of which was substantive, and given that this order makes no revisions to Order No. 889–A, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB, for informational purposes only.

The information reporting requirements under this order are unchanged from those contained in Order No. 889–A. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention Michael Miller, Information Services Division, (202) 208–1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087].

The Commission Orders

As discussed in the body of this order, the requests for rehearing are hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31856 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–P

[24] 5 U.S.C. 601–612.

[25] *See* Order No. 889, FERC Stats. & Regs. at 31,628.

[26] OMB Control No. 1902–0173.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations: Reporting of Claims of U.S. Nationals Against the Government of North Korea

AGENCY: Office of Foreign Assets Control

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign Assets Control Regulations to require the reporting, no later than March 9, 1998, of all outstanding claims held by U.S. nationals against the Government of North Korea or any North Korean government entity. The reports are needed to obtain information, on a one–time basis, for planning and administrative purposes in contemplation of future claims settlement negotiations. The control number assigned by the Office of Management and Budget to this information collection requirement is also included.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Blocked Assets Division, tel.: 202/622–2440, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document can also be downloaded in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem, dial 703/321–3339, and select

the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control (''OFAC'') is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through OFAC's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) touch–tone telephone.

Background

The Foreign Assets Control Regulations, 31 CFR part 500 (the ''Regulations''), are being amended to establish a mandatory, one–time census with respect to all outstanding claims of U.S. nationals against the Government of North Korea or any North Korean government entity.

Section 500.602 is added to the Regulations to require all U.S. nationals having such claims to report the claims by letter, including the information required by paragraph (f) of that section, by March 9, 1998. The definition of the term ''U.S. national'' is contained in § 500.602(g). Observance of the filing deadline is extremely important. The reports are needed to obtain information, on a one–time basis, for planning and administrative purposes in contemplation of future claims settlement negotiations.

For naturalized U.S. citizens, only claims arising after becoming a U.S. citizen should be reported. Similarly, an entity must have been organized under the laws of a U.S. jurisdiction at the time of loss to have a reportable claim.

The submission of a report of a claim against the Government of North Korea or a North Korean government entity does not constitute the filing with the United States Government of a formal claim for compensation. No formal claims adjudication program currently exists. However, failure to file a complete report with respect to claims in a timely fashion would constitute not only a failure to comply with the Regulations, but would also prevent the inclusion of the information in U.S. Government planning and may therefore be prejudicial to the interests of the claimant and other U.S. claimants. Espousal of claims of U.S. nationals against a foreign government is within the discretion of the United States Government.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

This final rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collection of information contained in this final rule has been submitted to and approved by the Office of Management and Budget (''OMB'') pending public comment, and has been assigned control number 1505–0160. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in the Regulations is contained in new § 500.602 of the Regulations. This information is needed by the Office of Foreign Assets Control and the U.S. Department of State for planning and administrative purposes in contemplation of future claims settlement negotiations. The likely respondents and recordkeepers are individuals and business organizations.

New § 500.602(e) provides that ''[r]eports submitted pursuant to this section are regarded as privileged and confidential.'' It is the policy of the Office of Foreign Assets Control to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

Estimated total one–time reporting and/or recordkeeping burden: 100 hours.

The estimated one–time burden per respondent/recordkeeper varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents and/or recordkeepers: 50.

Estimated frequency of responses: 1.

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

Comments concerning the above information, the accuracy of estimated average burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, control number 1505–0160, Washington, DC 20503, with a copy to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than February 9, 1998. Comments on aspects of the Regulations other than those involving collections of information should not be sent to the OMB.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Exports, Fines and penalties, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p.748.

Subpart F—Reports

2. Section 500.602 is added to Subpart F to read as follows:

§ 500.602 Reporting of claims of U.S. nationals against North Korea.

(a) *Requirement for reports*. Reports are required to be filed on or before March 9, 1998, in the manner prescribed in this section, with respect to all

outstanding claims held by United States nationals against the Government of North Korea or any North Korean government entity.

(b) *Who must report.* A report must be submitted by each U.S. national having a claim outstanding against the Government of North Korea or any North Korean government entity. Reports should be submitted only by persons who were U.S. citizens or entities organized under the laws of a U.S. jurisdiction on the date of the loss.

(c) *How to register.* U.S. nationals filing reports of claims must submit a letter containing the information required by paragraph (f) of this section. The letter must be sent to the Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, to arrive by March 9, 1998. A copy of the submission should be kept by the claimant.

(d) *Certification.* Every report shall bear the signature of the claimant or a person authorized by the claimant to sign the report. The signature will certify that, to the best of the reporter's knowledge, the statements set forth in the report, including any papers attached to or filed with the report, are true and accurate, and that all material facts in connection with the report have been set forth.

(e) *Confidentiality of reports.* Reports submitted pursuant to this section are regarded as privileged and confidential.

(f) *Contents of report.* The report must contain the following information (with responses numbered to correspond with the numbers used below):

(1) Identification of claimant.

(i) Claimant's Legal Name.

(ii) Claimant's Address.

(iii) Telephone number of individual to contact regarding the report.

(iv) If claimant is a naturalized citizen of the United States, state the place and date of naturalization.

(v) If claimant is a corporation or business, state the place of incorporation and principal place of business.

(2) Information concerning claim.

(i) Amount of loss in U.S. dollars (indicate exchange or interest rates and relevant dates utilized for any currency translation or interest calculation).

(ii) Describe the circumstances of the loss. Include the date of the loss and a description of the property, business, obligation, injury or other damage which is the subject of the claim.

(g) *Definition of United States national.* For purposes of this section, the term *United States national* or *U.S. national* means:

(1) An individual who is a citizen of the United States;

(2) An individual who, though not a citizen of the United States, owes permanent allegiance to the United States, and is not an alien; or

(3) A partnership, corporation, or other juridical entity organized under the laws of the United States or any jurisdiction within the United States.

(h) *Definition of the Government of North Korea; North Korean government entity.* For purposes of this section:

(1) The term *Government of North Korea* means the government of the territory of Korea north of the 38th parallel of north latitude, as well as any political subdivision, agency, or instrumentality thereof, or any territory, dependency, colony, protectorate, mandate, dominion, possession, or place subject to the jurisdiction thereof as of the ''effective date.''

(2) The term *North Korean government entity* means any corporation, partnership, or association, or other organization, wherever organized or doing business, that is owned or controlled by the Government of North Korea.

Subpart I—Miscellaneous Provisions

3. Section 500.901 is amended by adding a sentence to the end thereof to read as follows:

§ 500.901 Paperwork Reduction Act notice.

* * * The information collection requirement in § 500.602 has been approved by the Office of Management and Budget and assigned control number 1505–0160.

Dated: November 10, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 19, 1997.

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 97–32094 Filed 12-3-97; 3:54 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AI60

Guidelines for Furnishing Sensori-neural Aids (e.g., Eyeglasses, Contact Lenses, Hearing Aids)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms the Department of Veterans Affairs (VA) medical regulations concerning when VA will furnish veterans with sensori-neural aids (e.g., eyeglasses, contact lenses, hearing aids), which implement a requirement imposed in the Veteran's Health Care Eligibility Reform Act of 1996, Public Law 104–262.

DATES: Effective Date: This final rule is effective December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Frederick Downs, Jr., Chief Consultant, Prosthetics and Sensory Aids Service Strategic Healthcare Group (113), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–8515.

SUPPLEMENTARY INFORMATION: On June 3, 1997, VA published in the **Federal Register** an interim final rule with request for comments (62 FR 30240). This added a new section (17.149, 38 CFR part 17). A 60-day comment period ended August 4, 1997, and one comment was received. However, that comment dealt with resources rather than substantive content of the interim final rule.

Based on the rationale set forth in the interim final rule document, we are adopting the provisions of the interim final rule as a final rule without change. This final rule also affirms the information in the interim final rule document concerning the Regulatory Flexibility Act.

Approved: December 1, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–32106 Filed 12–8–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA042–4065; FRL–5925–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania New Source Review and Emissions Registry Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision requires major new and modified sources of volatile organic compounds (VOCs), nitrogen oxides (NO_X), particulate matter (PM), particulate matter with an aerodynamic diameter of less than 10 microns (PM–

10), PM–10 precursors, sulfur oxides (SO_X), carbon monoxide (CO), or lead (Pb) to meet certain new source review (NSR) permitting requirements if they are proposing to locate in a designated nonattainment area. These requirements also apply to major new and modified sources of VOC and NO_X proposing to locate in the ozone transport region (OTR). The intended effect of this action is to grant limited approval of Pennsylvania's NSR requirements.

EFFECTIVE DATE: This final rule is effective on January 8, 1998.

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

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink (3AT00), (215) 566–2104.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1997 (62 FR 24060), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed limited approval of Pennsylvania's NSR requirements for major new and modified sources locating in areas designated nonattainment for a given pollutant, and, in the case of VOC or NO_X sources, if they are being located in the OTR. The formal SIP revision submittal, which was submitted by Pennsylvania on February 4, 1994, also included associated new definitions and revisions to existing definitions, emissions banking requirements, and procedures for an emissions reductions credit (ERC) registry. The definitions are codified in section 121.1 of Pennsylvania's air pollution control regulations. The NSR, emissions banking and ERC registry provisions are codified in Sections 127.201 through 127.217 of Pennsylvania's air pollution control regulations, and replace the existing SIP provisions, which were codified at Section 127.61 through 127.73. A description of Pennsylvania's revised NSR and emissions banking and ERC registry requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. This action is being taken pursuant to section 110 of the Clean Air Act.

Public Comments Received and EPA's Responses

During the public comment period following publication of the NPR, EPA received three public comments from interested parties. A summary of those comments and EPA responses is provided below.

Comment 1: The first commenter agrees with EPA's proposed rulemaking action, particularly to the extent it supports the use of ''shutdown'' credits for new source offsets.

EPA's Response: None required.

Comment 2: The second commenter, Duquesne Light Company (Duquesne), an electric utility that serves the greater Pittsburgh area, takes issue with EPA's proposed limited approval action and contends that EPA must take limited approval/limited disapproval action so that the Pennsylvania Department of Environmental Protection (PADEP) may correct deficiencies in its rule which render it more stringent than federal requirements for NSR promulgated under the Clean Air Act. Duquesne argues that because PADEP has not adopted the federal definition of ''actual emissions,'' its regulation is, de facto, more stringent with regard to NSR-related baselines, particularly those associated with creating emission reduction credits (ERCs) for use as emission offsets. Duquesne asserts that Pennsylvania's de facto approach to defining actual emissions cannot be characterized as an alternative wording that is at least as stringent as EPA's definitions because PADEP's approach is, in effect, more stringent than the EPA's definitions. Duquesne comments that, under Pennsylvania law, PADEP is not allowed to make such a ''more stringent'' demonstration for its NSR program. Duquesne references section 4.2 of the Pennsylvania Air Pollution Control Act (APCA) and argues that it mandates that PADEP's regulations ''* * * shall be no more stringent than those required by the federal Clean Air Act,'' unless the Pennsylvania Environmental Quality Board (PA EQB) has made a determination that such regulations are ''reasonably necessary'' to exceed minimum Clean Air Act requirements. Duquesne contends that the PA EQB has not made the required determination for PADEP's NSR regulations.

EPA's Response: EPA disagrees with this commenter that because Pennsylvania has not adopted the federal definition of ''actual emissions,'' EPA must take limited approval/limited disapproval action on the NSR SIP revision. The Clean Air Act requires that states adopt, for inclusion into the SIP, permitting requirements for the construction and modification of new major sources and major modifications in nonattainment areas (and for major sources and major modifications of VOC and NO_X in the OTR). Federal rules generally require that the SIP include legally enforceable procedures to determine whether the construction and modification of any facility, building, structure, or installation, or combination of these will result in a violation of applicable portions of the control strategy; or interfere with attainment or maintenance of a national standard in the State in which the proposed source or modification is located or in a neighboring State. Such SIP provisions must include the means by which a State or local agency responsible for final decision making on applications for approval to construct or modify will prevent such construction and modification if it would result in either of the two situations described above. EPA has determined that Pennsylvania's NSR-related definitions and NSR-related regulations, as a whole, are designed to be consistent with the tenets used in the design of the relevant and required attainment plans and their associated control strategies. EPA also disagrees that PADEP's NSR regulations must be revised because they are, de facto, more stringent than federal NSR requirements. EPA notes that the federal NSR regulations that apply to this action do provide that a State's NSR program may be more stringent than federal requirements. Consequently, a comment that a SIP revision is more stringent that the federal minimum requirements generally is not a basis for EPA to disapprove the revision.

EPA has determined pursuant to Section 110(a)(2)(E) of the Clean Air Act and 40 CFR section 51, Appendix V, that Pennsylvania has provided the necessary assurances that it has adequate authority to implement the SIP revision and that it has followed all of the procedural requirements of Pennsylvania laws and constitution in adopting the submittal.[1]

Section 4.2 of Pennsylvania's APCA (35 P.S. 4004.2) provides, in pertinent part:

(b) Control measures or other requirements adopted under subsection (a) of this section shall be no more stringent than those required by the federal Clean Air Act unless

[1] See, letter from Thomas J. Maslany, Director, Air, Radiation and Toxics Division, USEPA, to Arthur A. Davis, Secretary, Department of Environmental Resources, dated February 28, 1994.

authorized or required under this act or specifically required by the Clean Air Act. This requirement shall not apply if the [Environmental Quality Board] determines that it is reasonably necessary for a control measure or other requirement to exceed minimum Clean Air Act requirements in order for the Commonwealth:

(1) to achieve and maintain the ambient air quality standards, * * *

The issue of whether Pennsylvania's NSR regulations exceeded the requirements of the Clean Air Act and therefore was prohibited by the APCA was raised during Pennsylvania's public comment period. The PA EQB, in its response to comments, stated that the final regulations comply with the requirements of section 4.2 of the APCA. (See, Pennsylvania Bulletin 443, 447, January 15, 1994)

Duquesne also asserts that the Pennsylvania EQB has not determined in accordance with subsection (b) of section 4.2 of the APCA that the NSR regulations at issue are ''reasonably necessary'' to ''exceed minimum Clean Air Act requirements'' (footnote 1 on page four of Duquesne's May 29, 1997 comment letter). Duquesne's assertion is incorrect as shown by the express findings of the PA EQB contained in the Board Order adopting the regulations. The PA EQB Order approving the NSR regulations specifically provides:

The EQB finds that:

(4) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards . . . (Pennsylvania Bulletin 443,458 January 15, 1994 which was part of PADEP's February 4, 1994 SIP revision submission).

Consequently, EPA believes that the PA EQB has made the requisite finding for the adoption of rules and regulations more stringent than those required by the Clean Air Act.

Comment 3: The third commenter, Eichleay Environmental, a Division of Eichleay Engineers Inc. (Eichleay), neither specifically agrees nor disagrees with EPA's proposed action. Rather Eichleay states that EPA's limited approval of Pennsylvania's SIP revision suggests ''begrudging agreement'' with Pennsylvania's ERC program. Eichleay states its belief that ''Pennsylvania's program is, if anything, too restrictive.'' Eichleay provides several suggestions for preserving the value and longevity of ERCs which would require changes to Pennsylvania's regulations.

EPA's Response: EPA disagrees with the commenter that the proposed limited approval action suggests EPA's ''begrudging agreement'' with Pennsylvania's ERC program or any other provision of PADEP's NSR SIP submittal. EPA's rationale for its proposed limited approval of the Pennsylvania NSR SIP revision is articulated clearly in the notice of proposed rulemaking. EPA's rationale is based entirely upon its review of Pennsylvania's regulations and their conformance with federal NSR requirements. As noted above, Eichleay's comments on EPA's notice of proposed rulemaking included suggestions for changes to Pennsylvania's NSR regulations. Under the Clean Air Act, EPA is limited to taking action on SIP revision requests as submitted by the Governor or his designee, and has no authority to unilaterally modify state regulations via the SIP approval process.

Final Action

EPA is granting limited approval to Pennsylvania's revised NSR and emissions banking and ERC registry provisions, as well as the associated definitions of terms, submitted by PADEP on February 4, 1994 as a revision to the Pennsylvania SIP. The revised provisions strengthen the SIP and meets the NSR requirements of the Clean Air Act. Accordingly, this action revises 40 CFR section 52.2020 by adding paragraph (c)(107) to reflect EPA's approval action. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA 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 Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 the 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting limited approval of Pennsylvania's NSR-related regulations including its provisions for emissions banking and an ERC registry may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: November 7, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40 of the Code of Federal regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 amended by adding paragraphs (c)(107) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(107) Revisions to the Pennsylvania Regulations, Chapter 127 by the Pennsylvania Department of Environmental Protection

(i) Incorporation by reference.

(A) Letter of February 4, 1994 from the Pennsylvania Department of Environmental Protection transmitting revisions to the New Source Review Provisions.

(B) Revisions to the following Pennsylvania Department of Environmental Quality Regulations, effective January 15, 1994:

(1) Addition of Chapter 127, Subchapter E, New Source Review, Sections 127.201 through 127.217 inclusive, effective January 15, 1994.

(2) Deletion of Chapter 127, Subchapter C, Sections 127.61 through 127.73.

(ii) Additional materials consisting of the remainder of the February 4, 1994 State submittal pertaining to Chapter 127, Subchapter E.

[FR Doc. 97–32189 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN77–2; FRL–5933–3]

Approval and Promulgation of Air Quality Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve an ozone maintenance plan submitted as a State Implementation Plan (SIP) revision request and a redesignation request submitted by the State of Indiana for the purpose of redesignating Vanderburgh County (Evansville) from marginal nonattainment to attainment of the one-hour ozone national ambient air quality standard. Besides being based on information contained in the State's redesignation request, the approval of this redesignation request is also based on review of the ozone data for this area over the three most recent years, 1995 through 1997. EPA finds the State's maintenance plan and redesignation request to be acceptable and notes that, based on the most recent three years of ozone data, the area is currently attaining the one-hour ozone standard. This action does not address the area's attainment of the recently promulgated eight-hour ozone standard, which will be addressed in future rulemaking.

DATES: This action is effective December 9, 1997.

ADDRESSES: Copies of the State's redesignation request and maintenance plan, EPA's analyses (technical support documents and proposed and final rulemakings), and public comments on EPA's proposed rulemaking are available for inspection at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Edward Doty at (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(4)(A) of the Clean Air Act (CAA or the Act), Vanderburgh County, Indiana was designated as nonattainment for the one-hour ozone standard and was classified as marginal (see 56 FR 56694 (November 6, 1991)).

The Indiana Department of Environmental Management (IDEM) submitted an ozone redesignation request and maintenance plan as a SIP revision for Vanderburgh County on November 4, 1993. On July 8, 1994 (59 FR 35044), EPA published a direct final rulemaking approving the redesignation of Vanderburgh County to attainment of the ozone standard. On the same day, a proposed rulemaking was also published in the **Federal Register** which established a 30-day public comment period for the redesignation approval and noted that, if adverse comments were received regarding the final rulemaking, EPA would withdraw the direct final rulemaking and would address the comments through a revised final rulemaking. EPA received adverse comments, and published a withdrawal of the direct final rulemaking on August 26, 1994 (59 FR 44040).

Subsequent to the July 8, 1994 direct final rulemaking, EPA was informed by IDEM that a possible violation of the ozone standard had been monitored at a privately-operated industrial site owned by the Aluminum Corporation of America (Alcoa) in Warrick County. Warrick County (designated as attainment for ozone) adjoins Vanderburgh County to the east. Because Warrick County can be considered to be a nearby area downwind of Vanderburgh County on certain days, EPA questioned whether the monitored violation in Warrick County should be considered in any subsequent rulemaking on the redesignation of Vanderburgh County. IDEM indicated its intent to investigate the high ozone values and requested that EPA not act on the redesignation request pending the outcome of that technical investigation. IDEM completed its investigation and submitted the results to the EPA on June 5, 1995. IDEM's investigation concluded that the Alcoa peak ozone concentrations were unusual during the period of the monitored ozone standard violation, were biased high (relative to peak ozone concentrations at other area monitoring sites during the May through June, 1994 time period), and were not

representative of the Vanderburgh County nonattainment area peak ozone levels. IDEM recommended that EPA proceed with the redesignation of Vanderburgh County to attainment so that the maintenance plan could become federally enforceable.

Due to the large extent of additional data received after the July 8, 1994 direct final rulemaking and the extent of public comments on that rulemaking, EPA concluded that it was appropriate to repropose rulemaking for this redesignation action. EPA evaluated all available information, including public comments on the July 8, 1994 direct final rulemaking, and proposed to approve the redesignation of Vanderburgh County to attainment of the ozone standard on March 14, 1997 (62 FR 12137).

Based on the available information at the time of the March 14, 1997 proposed rulemaking, EPA proposed to take final action approving the redesignation of Vanderburgh County to attainment if any of the following three events occurred: (1) If Warrick County attained the ozone standard prior to final rulemaking action by the EPA on the Vanderburgh County redesignation; (2) if EPA determined that Vanderburgh County did not significantly contribute to an ozone nonattainment problem in Warrick County; or (3) if the EPA determined that the information available is not sufficient to determine whether or not Vanderburgh County significantly contributed to a nonattainment problem in Warrick County. EPA also solicited public comment on whether the 1994 Warrick County ozone standard violation data should be excluded from consideration of the Vanderburgh County ozone attainment status.

On July 18, 1997, EPA promulgated a new National Ambient Air Quality Standard (NAAQS) for ozone, replacing the one-hour, 0.12 parts per million standard with an eight-hour, 0.08 parts per million standard (62 FR 38856). EPA is in the process of developing guidance and proposed rules to implement the new ozone standard based on a Presidential Directive signed on July 16, 1997, and published in the **Federal Register** on July 18, 1997. Today's action is a redesignation to attainment for Vanderburgh County for the one-hour, 0.12 parts per million standard and approval of the maintenance plan as it relates to the one-hour standard only. EPA's decision to redesignate Vanderburgh County to attainment and to approve the maintenance plan as a SIP revision is based on the requirements of section 107 of the Act and existing EPA policy and guidance as they pertain to the one-hour standard. Today's decision does not in any way make a determination regarding Vanderburgh County's attainment status for the newly promulgated eight-hour standard. Decisions regarding the attainment status of areas for the new eight-hour ozone NAAQS will be made by EPA at a later date.

II. Current Air Quality

A violation of the one-hour, 0.12 parts per million ozone standard occurs in an area when the annual average number of expected daily exceedances of the ozone standard exceeds 1.0 at any site in the area based on the most recent 3 years of ozone data. Therefore, the condition for a violation of the ozone standard would generally require that more than 3 exceedances of the ozone standard be monitored during the 3 most recent years of monitoring at any site in the area.

To review the ozone data for possible ozone standard violations, one must consider the defined ozone season for the area. The ozone season is that portion of the year when one may expect relatively high ozone concentrations exceeding the standard. Outside of this period, ozone standard exceedances are rarely or never recorded. The calculation of expected ozone standard exceedance rates takes into account the potential for ozone standard exceedances on days during the ozone season with invalid or missing data. For the State of Indiana, including the Evansville area, the ozone season is defined in 40 CFR Part 52 to be April through September.

Review of current ozone data for the period of 1995 through 1997 for the Evansville area, including Vanderburgh, Posey, and Warrick Counties, shows that the one-hour ozone standard has not been violated in the area during the most recent 3 years. Only a single exceedance of the one-hour ozone standard was monitored in the area during this 3-year period: 0.131 parts per million, recorded at the Booneville site in Warrick County in 1995. IDEM, in an October 3, 1997 letter to the EPA, confirmed that there were no current ozone standard violations in the area and that the ozone data for the area through September, 1997 were quality assured. The October 3, 1997 letter listed the four highest daily one-hour ozone concentrations at all ozone monitoring sites in the Evansville area (including those in Posey, Vanderburgh, and Warrick Counties) during each year for the 1995 through 1997 period, confirming the lack of ozone standard violations in the area during this period.

Based on the current ozone monitoring data, it has been determined that the ozone standard has been attained in the Evansville area. As noted in the proposed rulemaking (62 FR 12138), this, along with approval of Indiana's maintenance plan and the State having met the redesignation requirements of section 107(d)(3)(E) of the CAA, forms the basis for final approval of IDEM's redesignation request for Vanderburgh County. It should be noted that the lack of an ozone standard violation for the period of 1995 through 1997 moots the issues surrounding the ozone standard violation monitored in 1994 at the Alcoa site.

III. Responses to Public Comments

EPA received 20 sets of comments on the March 14, 1997 proposed rulemaking, including 89 individual comments with significant overlap (the comments have been grouped into several general categories and are addressed below in summary form). All of these comment sets contained comments generally critical of EPA's proposed approval of the redesignation or of the proposed technical basis for the approval. The following discussion addresses the comments with one general exception. Those comments addressing EPA's treatment of the 1994 Alcoa ozone standard violation or emission contributions to that standard violation are not generally addressed, since those comments are rendered moot by the 1995 through 1997 monitored ozone data demonstrating attainment of the standard at the Alcoa site and at other sites in the Evansville area as a whole.

A. Air Quality and Designation Timing

1. Comment

Several commenters note that EPA and IDEM failed to redesignate Vanderburgh County to nonattainment in 1988 or 1989 following a violation of the ozone standard in the 1986 through 1989 time period. The commenters note that, had EPA or IDEM done so, Vanderburgh County would have been subject to stationary source Reasonably Available Control Technology (RACT) requirements under the pre-1990 CAA.

Response

It is true that a monitor in Vanderburgh County recorded a violation of the one-hour ozone standard during the 1987–1989 time period. The decisive ozone standard exceedance was recorded in 1989 and was not reported in quality assured form to the EPA until the last half of 1989,

in keeping with quality assurance and data reporting requirements.

During 1990, EPA was considering how to address the new ozone standard violation in the Evansville area. Under the CAA prior to its 1990 revision, EPA could not unilaterally redesignate an area to nonattainment without an initiating request from the State containing the area. EPA could, however, request a SIP revision under section 110 of the CAA to address an air quality problem despite the lack of a nonattainment designation. Under section 110 of the CAA, this ''SIP-call'' can require the State to address the problem in a timely manner, but cannot prescribe specific measures, such as the adoption of RACT rules, which can only be required in areas specifically designated as nonattainment.

Before a SIP-call could be used in the Evansville area, the CAA was revised. Under section 182 of the revised CAA, Vanderburgh County was classified as a marginal nonattainment area for ozone. Under section 182(a) of the revised CAA, sources located in marginal ozone nonattainment areas are not subject to new RACT requirements (sources in marginal nonattainment areas are subject only to correction of existing RACT regulations). It should also be noted that the SIP-call process would have extended well past the November 15, 1990 adoption time of the CAA revisions.

2. Comment

A commenter concurs with EPA's proposed rule that, if no ozone standard violation is monitored in Vanderburgh County or in its downwind environs during the 1995 through 1997 time period, the Clean Air Act would allow Vanderburgh County to be redesignated to attainment of the ozone standard. The commenter believes, however, that no action should be taken to redesignate Vanderburgh County until all of the data have been quality assured, demonstrating that there have been no ozone standard violations through 1997 and through the entire 1995–1997 period. To do otherwise would be premature and probably illegal. Other commenters also oppose the redesignation of Vanderburgh County until all of the data in the region, including Warrick County, demonstrate monitored attainment of the ozone standard.

Response

As noted above, on October 3, 1997, IDEM confirmed that the 1997 ozone data for Vanderburgh, Posey, and Warrick Counties had been quality assured through September (the end of the defined ozone season). The 1995 through 1997 ozone data demonstrate that no violation of the ozone standard has occurred in the Evansville area, including in Posey and Warrick Counties, during the most recent 3 years.

B. Regional Air Quality Impacts

1. Comment

Commenters note that industrial source emissions must be ''cleaned-up'' in Vanderburgh County as well as in its surrounding counties before the area can be redesignated to attainment. The commenters believe that a regional ozone problem exists in the area. The commenters state that emission reductions in Vanderburgh County only would not be sufficient to address the regional ozone problem of the Evansville area (Vanderburgh, Gibson, Posey, and Warrick Counties).

Response

As noted above, attainment of the ozone standard has been monitored in the entire area. This was accomplished without the implementation of a region-wide emission reduction program mandating controls beyond emission reductions already required in the area, such as those resulting from the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP).

With regard to the regional nature of the area's peak ozone concentrations, it should be noted that the Ozone Transport Assessment Group (OTAG) process has reached closure, with the participating States recommending a range of possible Oxides of Nitrogen (NO_x) emission reduction requirements to the EPA. On November 7, 1997 (62 FR 60318), the EPA proposed rulemaking that would require States to meet statewide NO_X emission budgets. The implementation of requirements to attain the NO_X emission budgets in the eastern United States should significantly reduce the amount of ozone transported into the Evansville area or generated by Evansville emissions and transported to downwind areas. Assuming that the rulemaking is finalized, the State of Indiana is expected to reduce regional NO_X emissions to comply with the allowed NO_X emission budget. These NO_x emission reductions should reduce regional ozone levels.

In addition, the commenters cite no policy requiring such a region-wide emission reduction. Since Vanderburgh County is a marginal nonattainment area, the CAA does not require emission reductions over a larger region, such as a metropolitan statistical area.

2. Comment

A commenter notes that, when the State was asked to put a monitor in Posey County in 1988, the State refused, saying that what happened in Vanderburgh County from an emissions control standpoint would also happen in the contiguous counties. The commenter believes that, in reality, the State only contemplated emission controls in Vanderburgh County, for which the nonattainment designation was imposed. The commenter believes that this restriction of emission controls was wrong given that emissions in surrounding counties exceed those in Vanderburgh County.

Response

Based on Indiana's 1990 base year Volatile Organic Compound (VOC) emissions inventory for the Evansville area, emissions of VOC in Vanderburgh County exceeded those from any of the surrounding counties. Based on this fact and the fact that, at the time of the designation of Vanderburgh County as nonattainment for ozone, the ozone standard violation was limited to Vanderburgh County, it was appropriate to assume that the emission control measures should focus on Vanderburgh County. In addition, since only Vanderburgh County was designated as nonattainment for ozone, it was reasonable to focus attention on emission controls there.

The commenters provide no data showing that emissions of VOC in the surrounding counties, on a county-by-county basis or as an area total, exceed those in Vanderburgh County.

3. Comment

A commenter notes that, in 1988, the commenter was assured by the State that, if Vanderburgh County was designated as nonattainment for ozone, all of the surrounding counties would be given the same designation. Only Vanderburgh County, however, was proposed for the nonattainment status. To the commenter, it appears that political and industrial interests in the counties surrounding Vanderburgh County were able to persuade the State to make only Vanderburgh County nonattainment. Meanwhile, EPA and IDEM have refused to discuss ozone precursor emission controls for the surrounding counties.

Response

Designation of Vanderburgh County only and not the entire metropolitan area as nonattainment for ozone is

entirely consistent with the requirements for marginal nonattainment area designations under section 107(d)(4)(A)(iv) of the CAA. IDEM acted within the requirements and limits of the CAA in selecting only Vanderburgh County as the marginal ozone nonattainment area. This decision was supported given that the ozone standard violation in the 1987 through 1989 period was limited to Vanderburgh County, and that the VOC emissions of Vanderburgh County exceeded those of any of the surrounding counties at that time.

4. Comment

A commenter states that, according to section 107(d)(1)(A)(i) of the CAA, the State and the Administrator are required to find that an area is nonattainment if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) an air quality standard. The commenter believes that clearly Posey, Gibson, and Warrick County emissions contributed to the ozone standard violation that occurred in Vanderburgh County. The entire area should have been designated as nonattainment for ozone.

Response

In addition to responses to similar comments above, it is noted that no modeling data or similar ozone production and transport analyses exist which would indicate that emissions from Posey, Gibson, and Warrick Counties contributed to the 1988–1989 ozone standard violation in Vanderburgh County. Until such data are made available, one can not draw this conclusion other than through speculation. Given the data available and the requirements of section 107(d)(4)(A)(iv) of the CAA (this section of the CAA only defines minimum nonattainment area sizes for areas classified as serious or above for ozone, the State is given more discretion in selecting the size of nonattainment areas for areas classified as marginal or moderate nonattainment), EPA believes that the State of Indiana acted in keeping with the requirements of the CAA in selecting only Vanderburgh County as the nonattainment area.

C. Ozone Transport Assessment Group

1. Comment

Commenters question the need for the EPA to rely on OTAG-related emission reductions (expected to be required through future rulemaking), since these emission reductions are not yet tangible and are not sufficient to avoid ozone problems during hot summers. Reliance on ''possible'' future emission reductions from OTAG while ignoring the Alcoa ozone standard violation is incongruous and explains why poor air quality continues in the Evansville area.

Response

Although EPA mentioned the potential benefits from OTAG-related emission reductions in the proposed rulemaking, it did not rely on these future emission reductions as a basis for the proposed redesignation of Vanderburgh County. The Evansville area has attained the ozone standard without these emission reductions. In addition, the State's maintenance plan for this area shows continued maintenance of the ozone standard without considering the impacts of these emission reductions.

In discussing the OTAG-related emission reductions expected in the near future, the EPA was simply noting that these emission reductions would lower the background ozone concentrations in the Evansville area, further lowering the ozone concentrations in the area. Such decreases in ozone concentrations would act to reduce the risk of future violations of the one-hour and eight-hour ozone standards. The State of Indiana actively participated in the OTAG process and is expected to reduce NO_X emissions to comply with the resulting NO_X emission budget. This NO_X emission reduction is expected to reduce area ozone levels and transport of ozone into downwind areas.

2. Comment

A commenter notes that EPA's reliance on emission reductions resulting from OTAG is unacceptable until EPA is sure what rules will come out of the OTAG process. It is the commenter's understanding that the OTAG process has nearly broken down. Deadlines have been missed. It is not clear what ozone precursor emission reductions will result from this process. In addition, EPA does not offer proof that OTAG controls will be implemented or that resulting emission reductions will be of sufficient quantity to achieve the ozone standard in the Evansville area. To rely on conjecture that OTAG emission reductions will occur is not consistent with the Congressional intent of making the air healthy in the Evansville area.

Response

As noted above, the EPA has not relied on OTAG-related emission reductions to attain the ozone standard in the Evansville area. The area has attained the ozone standard without such future emission reductions.

The OTAG process has not broken down. The OTAG process has reached closure, and the OTAG States have recommended a range of possible NO_X emission reduction requirements to the EPA. EPA proposed a SIP-call on November 7, 1997 in response to the recommendations of OTAG. Therefore, it is likely, assuming that the rulemaking is finalized, that significant NO_X emission reductions in the eastern half of the United States will result from the OTAG process. These emission reductions should also lower ozone levels in the Evansville area in the future, but are not being relied on to meet or to maintain the one-hour ozone standard in the Evansville area.

D. Source Growth and the Maintenance Plan

1. Comment

Several commenters believe that the maintenance plan submitted with Indiana's redesignation request is outdated and should be updated to reflect the emission increases that have occurred or are expected to occur in the region as a result of source growth. The commenters note the source impacts of new sources, such as A.K. Steel, the Casino Aztar River Boat (indirect traffic growth), and the Toyota truck plant to be located in neighboring Gibson County. The commenters believe that these new sources lead to increases in population, vehicle miles traveled, and industrial emissions, invalidating the existing maintenance plan. The commenters state that EPA should review the maintenance plan in light of these new emissions and that the maintenance plan submitted in 1993 is obsolete.

Response

Although the maintenance plan was submitted in 1993, prior to the source growth noted by the commenters, and uses 1990 as the attainment base year, EPA sees no reason to disapprove the maintenance plan based on source growth in recent years. This conclusion is based on several reasons. First, despite any source growth, Vanderburgh County is currently attaining the ozone standard and has continuously attained the standard throughout the period during which the redesignation request has been pending. To the extent that the Alcoa monitor indicated nonattainment during this period, the nonattainment problem was not monitored in Vanderburgh County itself, but rather in neighboring Warrick County (current data shows that Warrick County is also

attaining the one-hour ozone standard). Therefore, the source growth has not prevented attainment of the standard in Vanderburgh County. Second, in the case of the future emissions from the Toyota truck plant, IDEM, through the source permit development process, has evaluated the ozone impacts of these emissions on the Evansville area, including potential impacts on critical ozone monitoring sites in Warrick County. The State has concluded that increased ozone precursor emissions from this facility will not cause an ozone standard violation at any of the monitoring sites. Finally, the maintenance plan submitted by IDEM contains provisions for addressing unexpected emission increases. As noted in the March 14, 1997 proposed rulemaking (62 FR 12141), IDEM commits to periodically review area emissions and to conduct a review of the ozone impacts of increasing emissions if the VOC, NO_X, or Carbon Monoxide (CO) emissions in the area increase above the 1990 level. If the review indicates that the increased emissions have the potential to cause a violation of the ozone standard, IDEM would determine and adopt the emission controls needed to eliminate the potential air quality problem. Therefore, increasing emissions should not present a problem for maintenance of the ozone standard in this area as long as IDEM implements the maintenance plan.

As additional insurance toward maintenance of the standard, it should be noted that, based on the adopted maintenance plan, if increasing emissions do cause a future violation of the standard, IDEM is committed to select emission control measures from the contingency measure list for implementation toward attainment of the ozone standard.

Finally, it is noted that the commenters have presented no air quality analyses to demonstrate that the new sources (or indirect sources) in the area have the potential to cause future violations of the ozone standard. The EPA continues to find Indiana's maintenance plan to be acceptable.

2. Comment

Because of recent source growth in Vanderburgh County and in Southwestern Indiana, a commenter believes that the EPA should not redesignate Vanderburgh County to attainment of the ozone standard until the State implements an equitable program that regulates hydrocarbon emissions (VOC emissions) from industrial sources.

Response

Under section 107(d)(3)(E)(v) of the CAA, EPA may not approve the redesignation of an area to attainment of a standard until the State has met all requirements applicable to the area under section 110 and part D of the CAA. As stated in the proposed rulemaking for the Vanderburgh County redesignation, the EPA believes that the State of Indiana has complied with the requirements of the CAA as they pertain to the Evansville ozone situation (the CAA requirements, as noted above, do not require additional VOC emission controls for industrial sources in the Evansville area). In addition, as noted above, the area has attained the one-hour ozone standard without the implementation of additional VOC emission controls on industrial sources. Therefore, EPA has no basis for requiring additional emission controls on industrial sources.

3. Comment

A commenter notes that he had expected the 1990 ozone nonattainment designation for Vanderburgh County to have resulted in emission reductions in the area. Instead of emission reductions, the commenter believes that the available information points to industrial and mobile source growth. The commenter believes that local economic development efforts have increased since Vanderburgh County became nonattainment for ozone with resulting increases in the number of polluting industries.

Response

Responses to comments 1 and 2 of this subsection generally address this comment. With regard to the last point of the comment, there is no evidence that local economic development efforts have focused on attracting polluting industries to Vanderburgh County since Vanderburgh County became nonattainment for ozone. In fact, it should be noted that a Toyota truck plant has chosen to locate in Gibson County (an ozone attainment area) rather than in Vanderburgh County, where a larger labor force may be found. The nonattainment designation of Vanderburgh County, thus, may have been a factor in the location of this plant outside of Vanderburgh County. Therefore, the commenter's last point is not supported.

4. Comment

Commenters note that EPA's and IDEM's use of 1990 as a base year for the maintenance plan is not an accurate reflection of the current conditions. The commenters state that Evansville's economy has significantly changed in the last few years, and it follows that ozone precursor emission data would be very different if data from 1994 and 1995 were used for decision making in 1997 and 1998. The commenters believe that the current data should be used as a matter of policy and common sense.

Response

As noted above, Indiana's maintenance plan for the Evansville area commits the State to periodically review the area's emissions and to take action if the VOC, NO_X, or CO emissions in Vanderburgh County increase to levels above those in 1990. If emissions have significantly increased in a manner previously not accounted for in the maintenance plan, a periodic review of the emissions should detect this growth and should lead to corrective actions, if determined to be needed to prevent an ozone standard violation. In addition, it should be noted that the choice of 1990 as the maintenance demonstration base year was appropriate when IDEM prepared the redesignation request in 1993.

Also as noted above, the area is currently attaining the ozone standard. If emissions have increased to above-1990 levels, this would imply that emission levels higher than those in 1990 could be sustained without violating the ozone standard. Requiring the maintenance plan to be revised to incorporate the higher emissions would not result in a requirement for additional emission controls to compensate for the increase in emissions, but would allow one to assume that emissions exceeding the 1990 levels (assuming emissions have increased to levels above the 1990 levels) would not cause a violation of the one-hour ozone standard. The current maintenance plan encourages the State to maintain lower emissions in the area.

5. Comment

A commenter notes that, according to recent press releases, several firms, including GE Plastics in Posey County and American Steel Extrusion in Vanderburgh County, have applied to IDEM for permits to increase VOC emissions with no offsets from other sources as required by the Act.

Response

This is not an issue relevant to the redesignation at hand, but, instead, is relevant to new source review requirements. The commenters should address this issue through comments on the new source permits when they are reviewed under Indiana's source

permitting procedures. Indiana allows for public review of such new source permits.

In addition, if the emissions in the area do increase as result of the source permit revisions, IDEM would have to take these emission increases into account under the periodic emissions review covered by the maintenance plan. If the emissions increases are determined to have a potential to cause a future ozone standard violation, the State would have to activate emission control measures to mitigate the problem.

Finally, it should be noted that, since Vanderburgh County is being redesignated to attainment for ozone, new sources will not be required to obtain future offsets for new source growth.

6. Comment

A commenter notes that the EPA has failed to meet the tests required under section 107(d)(3)(E) of the Clean Air Act. The commenter believes that the EPA has erred in not meeting the test of section 107(d)(3)(E)(i) since there is a current (1994) violation of the ozone standard in the Evansville area. The EPA has also erred in not meeting the test of section 107(d)(3)(E)(iii), which sets the requirement that permanent and enforceable emission reductions be shown to be responsible for the observed improvement in air quality. The commenter questions how the EPA can make a declaration of the connection between emission reductions and air quality given that no SIP has ever been put into place for the Evansville area as was required by the Clean Air Act when Vanderburgh County was designated as nonattainment for ozone.

The commenter notes that during the years of 1988 through 1993, when the area was first recommended for redesignation to attainment, the only reductions in ozone precursors came about as a result of a serious economic slump. Several VOC emitters shut down, resulting in the improved air quality observed. As soon as the local economy rebounded, monitors in the area again showed exceedances of the standard, including the Warrick County ozone standard violation.

The commenter notes that, in the past several years, there has been a large economic development, which will cause further air quality deterioration. The Toyota truck plant in Gibson County has been permitted to emit 3,490 tons of VOC per year just seven miles north of Vanderburgh County. The General Electric facility in Posey County has undergone substantial growth. A soybean processing plant is scheduled for construction in Posey County that will emit as much as 1,400 tons of VOC per year. In addition, in Posey County, the Countrymark Refinery is increasing emissions to near-capacity levels.

In Warrick County, the Alcoa facility has increased emissions significantly. In addition, a new cold rolled steel facility (A.K. Steel) is under construction with plans to add a hot rolled mill in the next phase of expansion.

Within Vanderburgh County, power plants which operated at limited capacity are gearing toward total capacity operation due to the deregulation of the electric utility industry. The Evansville area sports the largest concentration of coal-fired power plants in the United States, with 3 of the top 10 plants in the United States located within this area.

The Casino Aztar River Boat has led to significantly higher vehicle traffic within the last year. In addition, growth in the retail sector during the last two years has led to significant traffic growth.

All of these facts concerning source growth dispute any EPA declaration that reductions in ozone precursors have taken place in this area.

Response

At the time IDEM submitted the redesignation request in 1993, VOC and NO_X emission reductions had occurred, contributing to the air quality improvement observed subsequent to 1988. These emission reductions have occurred primarily through source closures, which IDEM has made permanent and enforceable through the termination of source permits, and through mobile source emission reductions pursuant to the Federal Motor Vehicle Emission Control Program (FMVCP). At the time of the redesignation request submittal, it was appropriate to give credit to these permanent and enforceable emission reductions as contributors to the observed air quality improvement in the Evansville area.

With regard to recent emission impacts from new source growth, it is acknowledged that such source growth has occurred. It is noted, however, that this does not constitute a problem for Indiana's maintenance plan. The maintenance plan for the area contains contingency measures triggered by increases in emissions exceeding the 1990 attainment year emissions levels. If the periodic review of VOC and NO_X emissions shows increases to levels exceeding the 1990 levels, IDEM has committed to initiate a study of the impact of the emissions increase on air quality and to take action in terms of additional emission controls if the analyses indicate the emission increases have a potential to cause a future ozone standard violation. Therefore, the maintenance plan contains safeguards against the impacts of unexpected emission increases, and the EPA sees no reason at this time to disapprove the maintenance plan on the basis of any recent emission increases.

It is noted that the maintenance plan did assume some future growth in emissions would occur as a result of changes in the economy and, nonetheless, demonstrated maintenance of the ozone standard in Vanderburgh County for 10 years into the future. Moreover, despite any recent emission increases from new source growth, the 1995 through 1997 ozone data demonstrate continuing attainment of the ozone standard in Vanderburgh County and current attainment of the ozone standard in surrounding counties. Although part of this attainment may be due to favorable meteorology, it must be noted that this attainment period includes 1995, a year particularly noted for meteorological conditions favorable to high ozone concentrations. Despite this, ozone standard exceedances were not prevalent in the Evansville area during this period (a single ozone standard exceedance of 0.131 parts per million was recorded at the Booneville site in 1995, with no other exceedances in the area). Obviously, the growth in VOC emissions did not contribute to an ozone standard violation in 1995 despite favorable meteorological conditions. Equally important, despite new source growth, no ozone standard exceedances were recorded in the area during the 1995 through 1997 period. These observations argue against the concerns of the commenter regarding the impacts of new source growth.

Although the emission increases resulting from source growth bear watching through the maintenance plan, the fact that these emission increases exist does not lead to the conclusion that the maintenance plan is flawed or should be disapproved.

E. Action Committee for Ozone Reduction Now

The proposed rulemaking described a public forum process used in the Evansville area to select contingency measures for possible adoption and implementation. Although this public forum has resulted in the selection of possible emission control measures which may further improve ozone levels in the Evansville area, it should be noted that the State has not relied on these measures to attain the one-hour

standard, the EPA has not relied on these measures as a basis for its approval of Indiana's redesignation request for Vanderburgh County.

The group formed to carry out the selection of possible control measures was given the title of the Action Committee for Ozone Reduction Now (ACORN). The following comments relate to EPA's discussion of ACORN and the selected emission control measures.

1. Comment

A commenter notes that, through participation in the ACORN process, the following concerns may be raised with regard to the resulting emission control measures:

a. There are no requirements for enforcement of the proposed emission reductions;

b. The proposed emission reductions do not address the regional nature of the ozone problem in Vanderburgh County. The commenter believes that the high ozone levels monitored in Vanderburgh County may be attributed to ozone precursor emissions outside of Vanderburgh County; and,

c. The proposed emission reductions do not address the ozone impacts of the area's expanding population, increasing traffic, and increasing industrial emissions.

Response

The following addresses the three issues:

a. The ACORN process, as discussed in the proposed rulemaking led to recommendations for the following four emission control measures: (1) High volume low pressure (HVLP) paint gun change outs for autobody refinishing and paint spraying operations; (2) Stage I gasoline vapor recovery during loading of underground storage tanks at gasoline service stations; (3) establishment of a pollution prevention and education task force; and (4) use of less polluting gasoline. To implement measures (1), (2), and (4) in an enforceable manner, the State must adopt the measures in the form of enforceable regulations. IDEM has informed the EPA that the State is in the process of adopting measures (1) and (2), and are giving further consideration to measure (4), which is not being processed for adoption at this time. Implementation and enforcement of the measures in the future will help maintain the ozone concentrations in the area at below-standard levels.

The third measure, establishment of a pollution prevention and education task force, may not lead to specific regulations, but will probably lead to a list of suggested pollution prevention procedures. Since pollution prevention procedures may be applied to many sources and source categories, it is impossible for the State to develop emission control regulations for all or most source categories. The State, however, may take an active role in promoting the use of such procedures. It is not clear at this time whether the pollution prevention task force has actually been established or, if so, whether the task force has made specific recommendations for pollution prevention measures. In addition, it should be noted that this process may be community-based, with local residents and industries taking the lead rather than the State;

b. See responses to comments in subsection B. above; and

c. See responses to comments in subsection D. above.

2. Comment

A commenter notes that, since Vanderburgh County was redesignated as nonattainment for ozone, no formal program was implemented to reduce ozone levels, and nothing has been done to implement the ACORN proposals.

Response

As noted in the proposed rulemaking, since Vanderburgh County is classified as a marginal ozone nonattainment area and since the area was not subject to RACT rule correction requirements or to vehicle inspection/maintenance program correction requirements, the State is not required by the CAA to develop new emission control regulations for this area. The State has met all requirements relevant to the marginal nonattainment status of this area.

With regard to the implementation of the ACORN proposals, see the response above.

3. Comment

A commenter notes that reliance on IDEM, local officials, and ACORN for local controls is unacceptable for several reasons. First, the ACORN proposals are minimal in scope and the ACORN process has broken down. Second, the ACORN emission reductions, if they occur, are voluntary pollution prevention techniques. Although the voluntary approach has been available in the past, industries have failed to reduce emissions. The commenter believes that the voluntary emission reductions must be backed by RACT requirements on any industry that fails to make a documented effort to reduce emissions.

Response

The ACORN process has not broken down and has reached conclusion with the recommendation of the four emission control measures discussed above. These measures have the potential to produce significant emission reductions. Stage I emission controls, use of cleaner fuels, and use of HVLP spray guns have the potential to produce significant emission reductions if supported by State adopted regulations. Pollution prevention, if aggressively pursued and promoted, also has a potential for significant emission reductions. Regardless of the emission controls selected, the emission controls will be useful in offsetting the impacts of source growth and will lower the potential for future ozone standard exceedances. (These emission reductions will contribute toward attainment of the eight-hour ozone standard.)

With regard to RACT, because of the marginal ozone nonattainment classification of Vanderburgh County and section 182(a) of the CAA, RACT is not required in Vanderburgh County. In addition, because of the attainment of the ozone standard during the 1995 through 1997 period, the implementation of RACT is not needed to attain the one-hour ozone standard.

4. Comment

A commenter notes that EPA's proposed redesignation is loaded with supposition, hope, and wishes that the paper pushing of industries and ACORN will pay off in attaining and maintaining the standard. The proposed redesignation, however, misses the point of the CAA which is to improve the health of humans. No amount of wishing will change the ill health that local residents experience in the summer months, when industrial emissions are trapped by the meteorological inversions that are common in the area. Calling the area ''attainment'' will not reduce one pound of pollution and will hasten degradation of the region's air by allowing massive increases in pollution in the one county that is nonattainment.

Response

The Clean Air Act, in part D, specifies the minimum requirements for State ozone control plans for various ozone classifications. The State of Indiana has met the requirements for marginal areas in Vanderburgh County. Given the 1995 through 1997 attainment of the ozone standard and the State's compliance with SIP requirements, Vanderburgh

County qualifies for the designation of attainment.

5. Comment

While the commenter participated in the ACORN process and endorses the recommendations it has made, the commenter notes that it was the belief of the ACORN participants that the proposals that came out of the process would do little to actually reduce ozone precursors. In addition, nowhere in EPA's notice of proposed rulemaking nor in its associated technical support document does the EPA offer any concrete evidence that the air quality will be improved to healthful levels as a result of the recommendations of ACORN, even if fully implemented.

The commenter notes that ACORN provided only the ''lowest common denominator'' approach and offered a bare minimum emission control proposal on which the group could reach consensus. The commenter believes this allowed the industry to write its own regulations because the industrial sector of the ACORN group stifled the solutions offered by the citizen representatives.

For EPA to claim that ACORN's recommendations reflect the desire of the community is dishonest. It was apparent to the commenter that ACORN was used by IDEM to achieve a no-action, minimal result that would satisfy the industry and appease the public.

Response

As noted above, the 1995 through 1997 ozone data demonstrate that the Evansville area has attained the ozone standard without the implementation of the ACORN recommendations. EPA is not relying on the impacts of the ACORN-related controls to justify the redesignation of Vanderburgh County to attainment of the ozone standard. Nonetheless, it must also be noted that source growth is anticipated in this area. (EPA sees no data countering IDEM's source growth estimates for Vanderburgh County contained in the maintenance plan. Much of the large source growth has occurred outside of Vanderburgh County. The maintenance plan only deals with emission changes within Vanderburgh County. EPA does not require the State to consider source growth outside of the existing nonattainment area as part of the maintenance plan.) Although not yet quantified, it must be recognized that the ACORN measures, if implemented, have the potential to offset source growth impacts.

Insufficient data are available to allow the EPA or IDEM to determine the full extent of the emission impacts of ACORN's recommendations. Until adopted regulations are in place and pollution prevention recommendations have been selected, it is impossible to determine all of the emission impacts. Nonetheless, assuming that emission control regulations are adopted, it must be concluded that the ACORN recommendations could lead to significant emission reductions.

EPA has never stated that the ACORN recommendations represent the wishes of the entire public in the Evansville area. Since ACORN had wide representation from government, industry, and the public, it must be assumed that some people involved in the ACORN process may have raised some objections to the recommended emission control measures or may have recommended emission controls not finally selected. The indication that the ACORN recommendations are a consensus opinion implies some level of dissent on selected emission control measures as well as on the emission control measures not selected.

6. Comment

A commenter notes that the reliance on Pollution Prevention (P2), if it is ever implemented, as a voluntary measure to gain nearly two-thirds of the total ACORN-recommended emission reduction is very suspect. Throughout the ACORN process, proponents of the P2 approach informed the officials that P2 is purely ''market driven'' and would carry no cost to anyone except the cost to local government for staffing a P2 office to provide education and support for P2 efforts. The commenter believes that this supposition can not be supported.

It is obvious that market driven P2 has been available in the area's history to cure the area's air pollution problem. If P2 can be achieved at no cost to industry, it would have already been in place for economic reasons. The fact is that P2 is little more than a hope, wish, and dream for most of the area's industry and it will require substantial capital investment for whomever takes this path.

The commenter believes EPA's reliance on a voluntary emission reduction program in an area with a history of resisting air pollution controls does not comply with the intent of the CAA. The commenter believes that P2 should be backed up with a requirement for the implementation of RACT for sources that fail to make a good faith effort to reduce their emissions using P2 techniques. The imposition of RACT gives industries incentives to implement P2 techniques.

Response

P2 programs are designed to reduce emissions through process changes that should be economically advantageous to the industries, such as process changes to reduce waste and the need for raw materials, lowering production costs. If P2 programs are successfully established, some industries should take advantage of the programs from an economic standpoint.

The EPA has never placed significant reliance on voluntary programs in areas with continuing air quality problems and ozone classifications requiring definitive emission controls under the CAA. Nonetheless, the EPA has seen the merit in promoting P2 programs as supplements to other controls. Since P2 programs are intended to provide industries with economic incentives to reduce emissions, one can assume that the industries will adopt such programs if the programs are implementable and well understood by the industrial representatives. P2 implementation does require significant efforts to document P2 approaches and to properly educate the applicable industries. Significant up-front investments may be needed, but should result in long term payoffs through lowered production costs. EPA acknowledges that such efforts may not be easy or quickly embraced by the industries.

Again, as already indicated above, RACT cannot be required in the Evansville area given the area's marginal ozone classification.

7. Comment

With regard to the proposal of ACORN relative to paint spray guns, a commenter notes that, according to local automobile refinishing shop owners, the proposal to require HVLP painting guns is virtually unenforceable. The commenter believes that the proposed ordinance will simply require such establishments to have only one HVLP apparatus in each of the refinishing shops with no requirement for the complete conversion of the painting operations.

Response

The EPA has been informed by IDEM that the State of Indiana is in the process of developing a regulation to require the use of HVLP units in the larger automobile refinishing shops. The EPA sees no reason why the State would be unable to produce a regulation requiring the use of HVLP units for all applicable coating operations. Naturally, the State may wish to exclude smaller shops from the application requirements of such a rule.

F. New Ozone Standard

1. Comment

Commenters question the need for a redesignation now just prior to promulgation of a new ozone standard (this comment was prepared prior to the July 18, 1997 promulgation of the revised ozone standard). The commenters question whether this is to permit new industries to develop before the new standard goes into effect.

Response

The designation being considered in this action is pertinent to only the one-hour standard. Designations for the eight-hour standard will be made in the future in accordance with the process for designating areas under the new standard and this redesignation rulemaking action has no relevance for that future designation action. Moreover, it would be inappropriate to maintain the one-hour nonattainment designation, if no longer applicable, on the assumption that the Evansville area might be designated as nonattainment for the eight-hour ozone standard in the future.

2. Comment

A commenter states that, taken within the context of the proposed (now promulgated) ozone standard, it does not make sense to proceed with the redesignation of Vanderburgh County under the one-hour standard. It appeared to the commenter that the EPA was proposing the redesignation so that it could occur prior to the implementation of the new ozone standard, providing the EPA with an additional three years of time before strict enforcement of whatever changes in the ozone standard are made. The commenter notes that this undermines the efforts of local citizens to clean up the air quality in the area.

Response

As noted above, the original one-hour ozone standard and the new eight-hour ozone standard are considered to be separable in terms of requiring emission controls and determining the area's attainment status. To do otherwise would result in the Evansville area being arbitrarily treated differently than other areas in the country which are currently attaining the one-hour standard or for which the one-hour standard may be revoked on the basis of air quality data attaining the one-hour standard (see discussion below regarding the revocation of the one-hour standard).

G. Toxics and Health Concerns

1. Comment

A resident, who lives close to the Alcoa facility in Warrick County, believes that the toxic emissions from this company are very harmful and detrimental to the local environment, including causing pitting and dark spots on building surfaces. The commenter believes that many residents in the area suffer with breathing problems.

Response

The EPA is very concerned about breathing problems caused by toxic emissions and other air pollutants. It is recommended that the commenter contact both EPA and IDEM with specific information on this problem to allow further considerations. Nonetheless, it should be noted here that the issue at hand is the ozone attainment status of Vanderburgh County. The EPA is unaware of any data linking air pollutant emissions from the Alcoa facility with an ozone standard violation in the Evansville area (including Warrick County) during the 3 most recent years.

2. Comment

A commenter notes that evidence of increased respiratory distress is mounting in area residents and that there is evidence that air quality is often the cause of a sickness that crosses the socioeconomic and age related population strata. This sickness is referred to by area doctors as the ''Evansville Crud,'' an upper respiratory malady that depletes body energy and causes coughing and fluid drainage from the respiratory system.

Response

EPA acknowledges that air pollution may be causing some respiratory problems in residents in this area. It is not clear that these problems are due to the impacts of ozone, which is the focus of this rulemaking. The commenter provides no data linking elevated ozone concentrations to the observed health problems. The EPA sees no reason to delay the redesignation based on the summarized health problems. The commenter is encouraged to work with health experts and IDEM to determine the actual pollutants responsible for the health problems and to determine the appropriate emission control measures.

3. Comment

A commenter believes that EPA and IDEM have failed to demonstrate that the respiratory health of Vanderburgh County residents has improved due to improved air quality. Although the commenter realizes that such a test is not required by the CAA, the commenter believes that, since the ozone standard is health-based, some criteria for assessing the impact of unhealthful air on a population could be warranted in lieu of proof that emissions have been reduced. Since it is clear that emissions have not been reduced in and around Evansville, some quantitative criteria based on health impacts should be offered to justify the redesignation to attainment.

Response

A redesignation action requires EPA to determine that certain statutory criteria have been met. EPA has made those findings here, including the finding that the one-hour standard has been attained. Monitoring attainment of the one-hour standard is an indicator of improved air quality. Given that the ozone monitors in the Evansville area, including all ozone monitors in Posey, Vanderburgh, and Warrick Counties, have indicated attainment of the ozone standard, one can conclude, based on the one-hour standard, that ozone levels are lower now than in 1988 or 1994, when violations of the one-hour standard were monitored in the area.

4. Comment

A commenter notes that, if the EPA and IDEM had done their jobs eight years ago when Vanderburgh County went out of compliance with the ozone standard in 1988, her daughter and thousands of others may not have developed asthma in the first place. She notes that RACT on industrial sources should have been put in place under the pre-1990 Clean Air Act and thinks that, if this had been done, air quality would have been better by now. She thinks EPA and IDEM have stalled in enforcing emission controls to benefit polluting industries and only respond favorably to the wishes of the industries.

Response

The EPA and IDEM have sought to comply with the current requirements of the CAA. Because of the time involved in redesignating areas to nonattainment of the standard, and the additional time for the State to develop air quality plans and regulations and to implement those regulations, RACT rules could not have been adopted until well after the 1990 revision of the CAA. The revised CAA set forth limited emission control requirements for marginal ozone nonattainment areas, such as Vanderburgh County, eliminating the requirement to implement new RACT rules in this area. In any event, Vanderburgh County is currently in

attainment of the standard and qualifies for redesignation to attainment.

5. Comment

A commenter asserts that the EPA is not using current data in the determination of the amount of pollution in the area. The commenter questions what EPA thinks the TRI database is for, and wants to know if the EPA is familiar with the thousands of journals which are reporting alarming increases in many diseases related to pollution. The commenter asserts that EPA and IDEM are violating the rights of citizens by not cleaning up pollution.

Response

The Toxic Release Inventory (TRI) database identifies the sources and emission rates of known hazardous compounds and heavy metals. Only to the extent that some of these compounds are VOC does the TRI database provide information relating to ozone precursor emissions. TRI-based VOC emissions are only a subset of the total VOC emissions involved in the formation of ozone. Generally, TRI–VOC emissions are already incorporated into the larger ozone-related VOC emission inventories maintained by the State and by the EPA.

The EPA is aware of the growing number of journal entries indicating adverse health effects due to various pollutants. Several thousand articles and study reports were reviewed in conjunction with the recent tightening revisions of the ozone and fine particulate standards. Within the constraints of the CAA, the EPA is taking action to provide additional protection for individuals subject to the harmful effects of air pollution. Nonetheless, the issue here is whether or not Vanderburgh County (and its downwind environs) continues to violate the one-hour ozone standard. The data indicate that this is not the case. With regard to the tightened standards, the Evansville area will be independently evaluated for attainment of these standards in the future. If the area is found to be violating one or both of these standards, additional emission control measures may be warranted at that time.

H. Miscellaneous Comments

1. Comment

A commenter contends that the maintenance plan seems to lack concrete plans of action and is not legally enforceable. The commenter doubts the merits of such a plan and fails to see how it will protect the public's health from future ozone standard violations.

Response

The maintenance plan outlines the procedures that the State will take if a future violation of the one-hour ozone standard occurs or if the VOC emission total in Vanderburgh County increases to a level exceeding the 1990 attainment year level (see a discussion later in this rulemaking for possible impacts of an anticipated revocation of the one-hour ozone standard). In the event of an ozone standard violation, it is clear that the State, within one year of the determination of the ozone standard violation, must select additional emission reduction controls sufficient to prevent future ozone standard violations. The maintenance plan lists a number of emission control measures that the State will consider for implementation and elimination of the air quality problem. The State is free to select the appropriate emission control strategy, but must demonstrate to the EPA that the emission controls will be adequate to prevent future ozone standard violations, and must adopt such measure or measures within the year following the confirmation of the ozone standard violation. In the case of emission increases above the attainment year level, the State must initiate a study to determine if additional emission controls are needed to prevent a future ozone standard violation. EPA views these commitments to be adequate and enforceable.

2. Comment

A commenter states that putting Vanderburgh County on the attainment list is ''false advertisement.'' This implies that Vanderburgh County could continue ignoring its air quality problems. Controlling emissions from gasoline and use of low pressure paint shop sprayers may be well and good, but industry should also clean up its emissions. These emissions reductions should occur throughout the entire region.

Response

The regional control component of this comment has been dealt with in responses to regional control comments above.

Again, it is noted that the CAA does not require RACT controls in the Evansville area. This is due to the fact that Vanderburgh County has been classified as a marginal ozone nonattainment area.

Redesignating Vanderburgh County to attainment is not ''false advertisement,'' since it recognizes the improvement in ozone levels in the Evansville area. It should also be noted that the redesignation does not send the signal that the State or local officials can simply forget about the impacts of the area's emissions on ozone levels. The State will need to continue to track ozone levels and VOC emissions in the area and will need to take corrective actions if future ozone standard violations occur or if future VOC emissions climb above attainment levels.

3. Comment

A commenter notes that neither IDEM nor EPA has done anything to require further NO_X emission reductions (beyond those required under title IV of the CAA) from coal-fired electric power plants both in the immediate region as well as in downwind areas in southern Illinois and Kentucky.

Response

This is the purpose of the OTAG–related SIP–call referenced in the proposed rulemaking and earlier in this final rulemaking. To reduce the impacts of ozone and ozone precursor transport, such NO_X emission reductions will be required in the near future. As noted above, on November 7, 1997 EPA published a proposed rulemaking that will require States in the eastern half of the United States to reduce NO_X emissions to achieve prescribed NO_X budgets. The State of Indiana was an active participant in the OTAG process, which led to the NO_X emission budget proposed for Indiana.

IV. Ozone Standard Revocation

On July 16, 1997, President Clinton concurred with the EPA on the revision of the ozone standard to an eight-hour averaged level. As part of that concurrence, President Clinton requested the EPA to revoke the one-hour standard for areas currently attaining the ozone standard. This standard revocation was to occur within a 90 day period following the concurrence (the standard revocation had not occurred at the time of the publication of the current action).

The revocation, as planned by the EPA, will consider 1994 through 1996 data in selecting appropriate areas for revocation.

Based on 1994 through 1996 data, Vanderburgh County may be subject to revocation of the one-hour standard.

If the revocation of the one-hour standard becomes effective for Vanderburgh County, the attainment status designation for this area will be replaced by a notification of the revocation of the one-hour standard.

Future rulemaking and guidance on EPA's transition policy (policy addressing the transition from the application of the one-hour ozone standard to the eight-hour ozone standard) will address the implications of this standard revocation for the area's maintenance plan and other ozone-related emission control requirements.

V. Conclusions

None of the public comments reviewed here warrants reversal of EPA's proposed approval of the redesignation of Vanderburgh County to attainment of the one-hour ozone standard and approval of the State's maintenance plan for this area as a SIP revision. Monitoring of ozone for the 1995 through 1997 period in Vanderburgh County and its adjoining Posey and Warrick Counties shows no violations of the one-hour ozone standard, demonstrating that this area has attained the one-hour ozone standard.

As noted above, on July 18, 1997 the EPA promulgated a revised eight-hour standard for ozone. The current rulemaking makes no judgments regarding the attainment of the revised ozone standard in the Evansville area. The attainment status of this area relative to the new ozone standard will be addressed in a future rulemaking.

VI. Final Rulemaking Action

EPA is approving the ozone redesignation request and the ozone maintenance plan submitted by Indiana on November 4, 1993 as they apply to Vanderburgh County. EPA is, therefore, redesignating Vanderburgh County to attainment of the one-hour ozone standard. The EPA has completed its analysis of the redesignation request and SIP revision request based on a review of the materials presented and in consideration of the current, 1995 through 1997, ozone data in the area, including ozone monitoring data in Posey, Vanderburgh, and Warrick Counties.

In taking this action, the EPA has taken into consideration all relevant public comments on the March 14, 1997 proposed rulemaking. None of the public comments were found to form the basis for a reversal of the proposed approval.

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.

VII. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 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.

Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated here 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 the 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 February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Volatile Organic Compounds, and Nitrogen dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 2, 1997.

David A. Ullrich,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.777 is amended by adding paragraph (s) to read as follows:

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(s) Approval—On November 4, 1993, the State of Indiana submitted a maintenance plan and a request that Vanderburgh County be redesignated to attainment of the one-hour National Ambient Air Quality Standard for

ozone. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Clean Air Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Indiana ozone State Implementation Plan.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.315 the ozone table is amended by revising the entry for ''Evansville Area: Vanderburgh County'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE

Designated areas	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Evansville area: Vanderburgh County.	December 9, 1997	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 97–32188 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5933–6]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Today's action suspends, on an interim final basis, the National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations (EO NESHAP). The suspension allows affected sources subject to the EO NESHAP to defer compliance with the NESHAP for one year until December 6, 1998. This action does not change the level of the standards or the intent of the NESHAP promulgated in 1994.

DATES: This action is effective December 4, 1997.

Under section 307(b)(1) of the Clean Air Act (Act), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this interim final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: Docket. Docket No. A–88–03, category VIII Amendments, containing information considered by the EPA in developing this rule, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the original EO NESHAP.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate EPA regional or Office of Enforcement and Compliance Assurance (OECA) representative:

Region I: Greg Roscoe, Air Programs Enforcement Office Chief, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203, Telephone number (617) 565–3221

Region II: Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007, Telephone number (212) 637–4080, Fax number (212) 637–3998

Region III: Walter K. Wilkie, U.S. EPA, Region III (3AT12), 841 Chestnut Building, Philadelphia, PA 19107, Telephone number (215) 566–2150, Fax number (215) 566–2114

Region IV: Lee Page, U.S. EPA, Region IV (AR–4), 100 Alabama Street, SW, Atlanta, GA 30303–3104, Telephone number (404) 562–9131, Fax number (404) 562–9095

Region V: Howard Caine (AE–17J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, Telephone number (312) 353–9685, Fax number (312) 353–8289

Region VI: Sandra A. Cotter (6EN–AT), U.S. EPA, Region VI (6PD–R), 1445 Ross Avenue, Dallas, TX 75202–2733, Telephone number (214) 665–7347, Fax number (214) 665–7446

Region VII: Bill Peterson, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, Telephone number (913) 551–7881

Region VIII: Heather Rooney, U.S. EPA, Region VIII (8ART–AP), 999 18th Street, Suite 500, Denver, CO 80202–2405, Telephone number (303) 312–6971, Fax number (303) 312–6826

Region IX: Christine Vineyard, U.S. EPA, Region IX (Air–4), 75 Hawthorne Street, San Francisco, CA 94105, Telephone number (415) 744–1197

Region X: Chris Hall, Office of Air Quality (OAQ–107), U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101–9797, Telephone number (206) 553–1949 or (800) 424–4372 x1949

OECA: Julie Tankersley, U.S. EPA, OECA (2223A), 401 M Street, SW, Washington, DC 20460, Telephone number (202) 564–7002, Fax number (202) 564–0050.

For information concerning the analyses performed in developing this interim final rule, contact Mr. David Markwordt, Policy, Planning and Standards Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0837 or fax number (919) 541–0942. For information concerning the accident

investigations, contact Mr. Craig Matthiessen, Chemical Emergency Preparedness and Prevention Office (5101), Office of Solid Waste and Emergency Response, U.S. EPA, 401 M Street, SW, Washington, DC 20460, telephone number (202) 260–9781.

SUPPLEMENTARY INFORMATION: An electronic version of this rule is available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. If more information on the operation of the TTN is needed, contact the systems operator at (919) 541–5384. The TTN is also available on the Internet (access: http://ttnwww.rtpnc.epa.gov).

The information presented in this preamble is organized as follows:

I. Background and Summary of Action
II. Summary of and Rationale for Suspension of the Rule
III. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866, Unfunded Mandates Reform Act, and Regulatory Flexibility Act
C. Submission to Congress and the Comptroller General

I. Background and Summary of Action

On December 6, 1994 (59 FR 62585), the EPA promulgated the EO NESHAP which regulates emissions of ethylene oxide from new and existing commercial sterilization and fumigation operations using 1 ton or more of EO per year. The regulated category and entities affected by today's action are the sources described in 40 CFR 63.360. That provision includes commercial operations using ethylene oxide as a sterilant and fumigant in the production of medical equipment and supplies, and in miscellaneous sterilization and fumigation operations at both major and area sources. Note that this description is not intended to be exhaustive but, rather, to provide a guide for readers interested in this compliance extension. To determine whether your facility is affected by today's action, you should carefully examine the applicability criteria in 40 CFR 63.360. If you have questions about the applicability of today's action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In July 1997, the Agency learned of reports of explosions at ethylene oxide sterilization and fumigation facilities. EPA does not want matters associated with the December 1997 compliance date to possibly compromise safety. Therefore, the Agency is suspending the EO NESHAP for one year until December 6, 1998.

II. Summary of and Rationale for Suspension of the Rule

As noted above, in July 1997, the Agency learned of reports of explosions at ethylene oxide facilities. Several of these explosions occurred at facilities subject to the EO NESHAP. The precise cause of the explosions is still uncertain at this time. The Agency, however, wishes to adopt a cautious approach in order to assure public and worker safety and, consequently, immediately began conducting a preliminary investigation to determine if the emission control equipment mandated by 40 CFR part 63, subpart O was in any way associated with the cause of the problems at these facilities.

In a July 18, 1997 memorandum, the director of EPA's Office of Air Quality Planning and Standards (OAQPS) asked all Regional Air Division Directors and Regional Air Toxics Coordinators to inform all ethylene oxide facilities of the recent incidents and the potential safety problem. Because subpart O's December 1997 compliance date had not yet been triggered, this memorandum also recommended that, if the owners or operators of the facilities had any safety concern, they should disconnect the control units until the matter could be examined further.

EPA does not know the extent to which the explosions that have occured to date were related to the installation of control equipment to comply with the EO NESHAP. However, the Agency wishes to err, if at all, on the side of safety. Accordingly, the Agency is today suspending the EO NESHAP for one year, until December 6, 1998 pursuant to the authority inherent to EPA's general rulemaking authority under CAA section 301(a), 42 U.S.C. 7601(a).

CAA section 301(a) grants the Administrator of the EPA the authority ''to prescribe such regulations as are necessary to carry out his functions under this Act.'' Given the unique circumstances and uncertainty surrounding the EO NESHAP, as described in this notice, EPA believes that it is necessary to suspend this rule for the safety of the public and workers in and around EO facilities. This action is consistent with the objectives of the Clean Air Act as stated in section 101(b), 42 U.S.C. § 7401(b), ''The purposes of this subchapter are * * * to promote the public health and welfare and the productive capacity of its population * * *''

The original EO NESHAP and today's action suspending that rule are promulgated pursuant to CAA section 307(d), 42 U.S.C. 7607(d), which requires that any rule subject to that section be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, section 307(d)(1) exempts from those requirements any rule for which the Agency finds under the Administrative Procedure Act, 5 U.S.C. § 553(b), that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest.

EPA believes the circumstances presented here provide good cause to take this action without prior notice-and-comment. EPA finds that providing prior notice-and-comment would be impracticable and contrary to the public interest based on the potential ongoing danger to public and worker safety posed by the recent incidents at ethylene oxide facilities. There is simply not enough time to provide notice-and-comment procedures before the current compliance date of December 6, 1997 arrives, and until the compliance date is extended, sources are faced with having to install control equipment in time to meet the current compliance date. Only by omitting notice-and-comment from this action can EPA provide sources affected by the EO NESHAP with timely legal relief from the current compliance date, while EPA investigates the situation. Consequently, this action is being promulgated without prior notice-and-comment as provided for in CAA section 307(b)(1) and is immediately effective as provided for in CAA section 112(d)(10).

Nonetheless, EPA is providing 30 days for submission of public comments. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

In addition, the OAQPS Director has requested that the appropriate Regional Offices, in cooperation with the Office of Solid Waste and Emergency Response's Chemical Emergency Preparedness and Prevention Office (CEPPO), and the Regional CEPPO program offices, visit the facilities where the incidents have occurred to gather all relevant information. In suspending the EO NESHAP and directing this investigation effort, the Administrator wishes to remind the public and the regulated community that the role of the EPA has been and continues to be protection of public

health and the environment in a way that is consistent with safety concerns.

As mentioned above, EPA has been investigating and will continue to investigate the cause of these incidents. During the one year suspension period, the Agency will provide the public with the results of the investigation. At the conclusion of the one year period, EPA expects to have addressed any safety concerns with the EO NESHAP requirements. If the Agency finds that changes to the EO NESHAP are necessary to address safety concerns, EPA will conduct a rulemaking to promulgate a revised standard and sources will be given adequate opportunity to comply with the revised rule. If, however, EPA concludes that no changes are necessary, EO facilities will be expected to be in compliance with the EO NESHAP by December 6, 1998.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the EO NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0283) may be obtained from Ms. Sandy Farmer, Information Policy Branch (2136); U.S. EPA; 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740.

Today's action has no impact on the information collection burden estimates made previously. Today's action merely suspends the EO NESHAP for one year. This change does not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866, Unfunded Mandates Reform Act, and Regulatory Flexibility Act

Today's action serves to reduce the burden on certain sources by temporarily suspending the EO NESHAP. Consequently, under Executive Order 12866, this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Since this action is not subject to notice-and-comment rulemaking requirements under the APA or any other law, it is also not subject to sections 202, 204 or 205 of the Unfunded Mandates Reform Act (UMRA). In addition, since this action does not impose annual costs of $100 million or more and will not significantly or uniquely affect small governments, the Agency has no obligations under section 203 of UMRA. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute as discussed above, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

C. Submission to Congress and the Comptroller General

EPA submitted a report containing this action and other information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in today's **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule is effective immediately pursuant to 5 U.S.C. 808(2) because the EPA for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest, for the reasons stated previously.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Ethylene oxide sterilization, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 4, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Part 63, Subpart O of the Code of Federal Regulations, is hereby suspended until December 6, 1998.

[FR Doc. 97–32328 Filed 12–5–97; 1:16 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50608E; FRL–5746–2]

RIN 2070–AB27

Polyalkylene Polyamine; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as polyalkylene polyamine which is the subject of premanufacture notice (PMN) P–89–963. This rule would require certain persons who intend to manufacture, or import this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or importing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule is effective January 8, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

This final SNUR would require persons to notify EPA at least 90 days before commencing the manufacture or import of P–89–963 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take

action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a ''User Fee Rule'' (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background and Response to Comments

EPA published a direct final SNUR for the chemical substance, which was the subject of (PMN) P–89–963 and a TSCA 5(e) consent order issued by EPA, in the **Federal Register** of June 8, 1993 (58 FR 32227). EPA received a notice of intent to submit adverse comments for this chemical substance following publication. Therefore, as required by § 721.160, the final SNUR for P–89–963 was withdrawn on December 19, 1994 (59 FR 65248) (FRL–4758–2), and a proposed rule on the substance was issued on December 19, 1994 (59 FR 65289) (FRL–4758–3).

The background and reasons for the SNUR were set forth in the preamble to the proposed rule. EPA received comments from the current manufacturer of the PMN substance. EPA's response to the comments and changes to the proposed rule are discussed in this document.

All but one of the comments can be summarized as follows: Since the 5(e) consent order requires only that manufacturers and importers be subject to hazard communication requirements concerning environmental effects, water release restrictions, and recordkeeping requirements, the SNUR should reflect similar regulation, and processors should not be subject to these SNUR requirements. EPA agrees with this clarification. The proposed SNUR would have required that only manufacturers notify the Agency if the substance was released to water. In addition, EPA is revising both the hazard communication and recordkeeping sections to make it clear that only manufacturers and importers are subject to the requirements of the SNUR.

The other comment was that since the toxicity testing (a 28-day oral study in rats) required by the 5(e) consent order at a designated production volume limit had already been completed and submitted to EPA, the corresponding production volume limit in the proposed SNUR should not be included in the final SNUR. EPA agrees and accordingly has eliminated this notification requirement from the final SNUR. In addition, the hazard communication requirements designated in the proposed SNUR at § 721.72 (a)(2)(i)(A) and (B) have been eliminated. These requirements would have compelled manufacturers, importers, or processors to incorporate into a Material Safety Data Sheet (MSDS) any risks to human health and methods for protecting against such risk, if such risks were demonstrated by the results of toxicity testing required under the section 5(e) consent order. EPA eliminated these requirements, since the order and the SNUR no longer require toxicity testing and the test data already submitted did not warrant additional hazard communication notification.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on June 8, 1993, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after June 8, 1993, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, and importers of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in the final rule. The Agency's complete economic analysis is available in the public record for this final rule (OPPTS–50608E).

VI. 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–50608E (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (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.

VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995

(Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. 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 Agency has 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 is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.6193 to subpart E to read as follows:

§ 721.6193 Polyalkylene polyamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as a polyalkylene polyamine (PMN P–89–963) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(i), (g)(4) (users minimize release to water), and (g)(5) are applicable to manufacturers and importers.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers and importers of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 97–32179 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–60

RIN 3090–AG65

Public Availability of Agency Records and Informational Materials

AGENCY: Office of Management and Workplace Programs, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising its regulations that implement the Freedom of Information Act (FOIA), to incorporate the time limit provisions of the Electronic Freedom of Information Act Amendments of 1996.

DATES: This rule is effective December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Cunningham, GSA Freedom of Information Act (FOIA) Officer (202–501–3415); or Helen C. Maus, Office of General Counsel (202–501–1460).

SUPPLEMENTARY INFORMATION: This rule was not submitted to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, because it is not a significant regulatory action as defined in Executive Order 12866.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Administrator certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) this rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Comprehensive Summary

The regulations of which this interim rule is a part implement the FOIA, that codified Pub. L. 89–487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.). The revision incorporates the time limit provisions of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231, 110 Stat. 3048), changing response time for initial requests from 10 working days to 20 working days. The remaining provisions of the 1996 amendments will be incorporated in a forthcoming edition of the regulations.

Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553 (APA). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for

dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports with and is consistent with the statutory authority and requirements set forth in the Electronic Freedom of Information Act Amendments of 1996 concerning time limits for responding to initial FOIA requests and administrative appeals with no issues of policy or discretion. Accordingly, opportunity for prior public comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule.

List of Subjects in 41 CFR Part 105–60

Freedom of information.

For the reasons set out in the preamble, 41 CFR Part 105–60 is amended as follows:

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

1. The authority citation for 41 CFR Part 105–60 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

Subpart 105–60.4—Described Records

2. Sections 105–60.402, 105–60.402–1, and 105–60.402–2 are revised to read as follows:

§ 105–60.402 Procedures for making records available.

Sections 105–60.402–1 and 105–60.402–2 set forth initial procedures for making records available when they are requested, including administrative procedures to be exhausted prior to seeking judicial review by an appropriate United States District Court.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAI), 1800 F Street, NW., Washington, DC 20405. Requesters may FAX requests to (202) 501–2727, or submit a request by e-mail to gsa.foi@gsa.gov. For records located in the Office of Inspector General, the requester must submit a request to the FOIA Officer, Office of Inspector General, General Services Administration, 1800 F Street NW., Room 5324, Washington, DC 20405. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words ''Freedom of Information Act Request'' prominently marked on both the face of the request letter and the envelope. The 20-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105–60.305–8 and 105–60.305–12(d) apply. Failure to include the words ''Freedom of Information Act Request'' or to submit a request to the official identified in this section will result in processing delays. A requester with questions concerning a FOIA request should contact the GSA FOIA Office, General Services Administration (CAI), 1800 F Street, NW., Washington, DC 20405, (202) 501–2691.

§ 105–60.402–2 Response to initial requests.

GSA will respond to an initial FOIA request that reasonably describes requested records, including a fee waiver request, within 20 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter will provide the agency's decision with respect to disclosure or nondisclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter. In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency's need to take an extension of time, not to exceed an additional 10 workdays.

Dated: November 24, 1997.

David J. Barram,

Administrator.

[FR Doc. 97–31489 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43, 63, and 64

[IB Docket No. 97–142, FCC 97–398]

Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On November 25, 1997, the Federal Communications Commission adopted a Report and Order that creates a new regulatory framework for international telecommunications. This action is a result of the recent World Trade Organization agreement on basic telecommunications services recently concluded wherein 69 countries, including the United States and virtually all of its major trading partners, agreed to open their markets for basic telecommunications services to competition from foreign carriers. Due to these changed circumstances, the Commission initiated a proceeding to revisit its rules governing foreign participation in the U.S. telecommunications market. In addition, the Commission's order addresses related issues raised in petitions for reconsideration of the Foreign Carrier Entry Order. The new rules will have significant benefits for consumers. Entry by foreign suppliers of telecommunications services will stimulate the U.S. market for international services, creating incentives for carriers to offer existing services at lower prices and adopt innovative new services to attract residential and small business customers. Further opening the U.S. market to foreign carrier entry, along with U.S. carrier entry into foreign markets, will allow carriers to capitalize on newly found efficiencies by offering one-stop shopping, which allows customers to have a single service provider in multiple markets, thereby reducing administrative costs to users.

This final rule contains information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the information collections contained in the final rule.

DATES: The amendments to §§ 43.51(d) and 64.1001(b) are effective January 8, 1998. All other regulations contain information collection requirements and are not effective until approved by the Office of Management and Budget (OMB), subject to 5 U.S.C. § 801(a)(3). A document announcing the effective date of these regulations will be published in the **Federal Register**.

The agency reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998. If these final rules are postponed, the agency will give timely notice in the **Federal Register**.

Written comments by the public on the information collection requirements are due February 9, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Douglas A. Klein, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–0424; Susan O'Connell, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1484. For additional information concerning the information collections contained in this Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. On June 4, 1997, the Commission released a Notice of Proposed Rulemaking in the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97–142 (62 FR 32966, June 17, 1997). The Notice proposed changes to the rules and policies governing foreign participation in the U.S. market for basic telecommunications services that had been previously adopted by the Commission in the *Foreign Carrier Entry* proceeding. The Commission initiated this proceeding to consider more appropriate rules in the liberalized competitive environment that will exist when the recent World Trade Organization (WTO) agreement on basic telecommunications services takes effect on January 1, 1998. The WTO agreement was concluded on February 15, 1997, when 69 countries, including the United States and virtually all of its major trading partners, agreed to open their markets for basic telecommunications services to competition from foreign carriers. This agreement covers 95 percent of the global market for basic telecommunications services. Sixty-five of these countries, including the United States, have committed to enforce fair rules of competition for basic telecommunications services that are modeled on U.S. law and regulations. Fifty-two of these countries, which account for approximately 90 percent of telecommunications revenues in WTO Member countries, have granted market access for international services. Thus, most of the world's major trading nations have made binding commitments to transition rapidly from monopoly provision of basic telecommunications services to open entry and procompetitive regulation of these services.

2. The order removes the effective competitive opportunities (ECO) test and replaces it with an open entry standard. In its *Foreign Carrier Entry Order,* the Commission adopted the ECO test as part of an overall public interest analysis for both international Section 214 authorizations and indirect foreign ownership of common carrier radio licenses under Section 310(b)(4). (*See* 60 FR 67332, December 29, 1995.) The Commission replaces the ECO test with a rebuttable presumption that applications for Section 214 authority from carriers from WTO countries do not pose concerns that would justify denial of an application on competitive grounds. The Commission also adopts a rebuttable presumption that WTO country applicants filing cable landing license applications, as well as applications to exceed the 25 percent foreign ownership benchmark in a common carrier radio licensee under Section 310(b)(4) of the Act, similarly do not pose such competitive concerns. The Commission finds that adopting a presumption in favor of entry will have significant public interest benefits.

3. The Commission recognizes, however, that in exceptional circumstances, entry into the U.S. market by an applicant affiliated with a foreign telecommunications carrier from a WTO country may pose competitive risks by virtue of the applicant's ability to exercise market power in a relevant foreign market. In such exceptional circumstances, the Commission will have the ability to attach additional conditions to or even deny a particular application. The Commission believes this approach provides protection against possible competitive harms while favoring neither foreign nor domestic applications.

4. The Commission also intends to apply its new open entry policies to cable landing license applicants. The Commission will continue, however, to analyze each application while seeking the approval of the State Department as required by Executive Order 10530. The Commission will no longer routinely impose a restriction on foreign ownership of cable landing stations. Should the Department of State, pursuant to Executive Order 10530, condition its approval of a particular cable landing license on such a restriction, the Commission will include a condition to that effect in the particular cable landing license. Any such restriction would be necessary to protect the national security of the United States.

5. In the *Foreign Carrier Entry Order*, the Commission adopted an ECO test as part of the public interest analysis under Section 310(b)(4) for applicants seeking authority to acquire greater than 25 percent indirect foreign ownership in a common carrier radio licensee. In this *Order,* the Commission replaces the current ECO test as applied to foreign investment from WTO Member countries in common carrier radio licenses with its new open entry policies. The Commission retains its general requirement that such licensees seek Commission approval before they accept foreign ownership that would put them over the 25 percent benchmark under Section 310(b)(4). The Commission will also continue to require licensees who have already received approval to exceed the 25 percent benchmark up to a certain level of indirect foreign ownership to seek further approval in order to increase that level of indirect foreign ownership. The Commission will continue to use the ''principal place of business'' test to determine the nationality or ''home market'' of foreign investors, but it will consider other means of determining an applicant's nationality if requested to do so by an applicant or if so advised by the Executive Branch.

6. The Commission will treat aeronautical enroute and aeronautical fixed services in the same manner as it treats common carrier services under Section 310(b)(4) and not apply an ECO test to indirect foreign ownership by entities from WTO Member countries. The Commission declines to address the rule limiting the number of aeronautical enroute licenses to one per location because the rule is beyond the scope of this proceeding. The Commission does, however, suggest several options for parties seeking to provide aeronautical services in the United States.

7. The Commission will continue to apply the ECO and equivalency tests to non-WTO Member countries. The Commission believes that continuing to apply the ECO test to non-WTO Member countries may encourage some of those countries to take unilateral or bilateral steps toward opening their markets to competition and may provide incentives for them to join the WTO. In the case of Section 214 applications to provide facilities-based, resold switched, and resold non-interconnected private line services, the Commission will continue to apply the ECO test as part of the public interest inquiry when presented with an application from a foreign carrier or a carrier affiliated with a foreign carrier where the foreign carrier is from a non-WTO Member country and has market power in the destination

market. The ECO test will be applied in a similar manner as part of the Commission's analysis under Section 2 of the Submarine Cable Landing License Act. The Commission will maintain the equivalency test as part of its standard for permitting the provision of switched services over private lines, whether facilities-based or through resale, for non-WTO Member countries. The ECO test will be applied as part of the Commission's general public interest analysis under Section 310(b)(4) regarding foreign investment by entities from non-WTO Member countries in common carrier radio licensees. The Commission will retain the ECO test as the threshold standard for permitting accounting rate flexibility with carriers from countries that are non-WTO Members.

8. In the Notice, the Commission noted that there were outstanding petitions for reconsideration of the *Foreign Carrier Entry Order*. In light of the WTO Agreement, the Commission requested comment on whether it should, for purposes of countries that are not WTO Members, apply the ECO test to U.S. carriers that own more than 25 percent of, or control, a foreign carrier from a non-WTO country. In the *Order*, the Commission recognizes that in the more liberalized environment that will result from the WTO Basic Telecom Agreement it will become increasingly difficult to define a ''U.S. carrier'' for the purpose of distinguishing between U.S.-carrier and foreign-carrier ownership of carriers. In addition, the GATS principle of National Treatment obligates the U.S. Government to treat investments by carriers from WTO Member countries no less favorably than it treats investments by domestic carriers. Thus, the Commission modifies its conclusion in the *Foreign Carrier Entry Order* and it will apply the ECO test where a U.S. carrier, or a company that owns more than 25 percent of a U.S. carrier, owns a controlling interest in a foreign carrier that has market power in a non-WTO country.

9. Given the new open entry approach, the Commission found it necessary to revise the competitive safeguards governing foreign-affiliated carrier provision of basic telecommunications services in the U.S. market and, more broadly, U.S. carrier dealings with foreign carriers. The Commission establishes a regulatory framework that modifies or eliminates rules that could hamper competition while balancing a need to monitor and detect anticompetitive behavior in the U.S. market without imposing burdensome regulations. For the purposes of applying the dominant carrier safeguards and No Special Concessions rule, the Commission creates a rebuttable presumption that a foreign carrier with less than 50 percent market share in each of the relevant markets on the foreign end of a U.S. international route lacks sufficient market power to affect competition adversely in the U.S. market. The Commission states that this presumption is rebuttable. Carriers may file petitions with the Commission seeking a declaratory ruling on whether a foreign carrier with a market share of 50 percent or more in any relevant market should be allowed to grant a special concession or be regulated as non-dominant because it lacks the ability to affect competition adversely in the U.S. market.

10. The Commission narrows its No Special Concessions rule to allow U.S. carriers to accept special concessions granted by foreign carriers that do not possess market power in a relevant foreign market without first obtaining specific approval from the Commission. The Commission concludes that its No Special Concessions rule should be limited to exclusive dealings involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of U.S. basic international service. The Commission did not adopt its proposal to specify a prohibition on special concessions involving the joint handling of basic U.S. traffic originating or terminating in third countries.

11. The Commission prohibits U.S. carriers from receiving proprietary or confidential information obtained by any foreign carrier in the course of its regular business dealings with a competing U.S. carrier, unless the competing U.S. carrier provides its specific permission in writing. Where a U.S. carrier is affiliated with a foreign carrier, the proprietary or confidential information of other U.S. carriers obtained by that foreign affiliate may not be used for any purpose other than for conducting the correspondent relationships with the carriers from whom the information was obtained. This rule will serve as a general requirement on all existing, pending, and future authorizations to provide U.S. international services.

12. The Commission concludes that safeguards are necessary given the privacy and anticompetitive effects that may result from the use of foreign-derived U.S. customer proprietary network information (CPNI). Under Section 222(a) of the Communications Act, every telecommunications carrier has a duty to protect the confidentiality of customer information. The Commission finds that if a U.S. carrier desires to make use of foreign-derived CPNI pertaining to a specific U.S. customer, it must first obtain appropriate consent from that customer. In doing so, the U.S. carrier also must notify the customer that he or she may require the U.S. carrier to disclose the CPNI to unaffiliated third parties upon written request by the customer. The Commission finds that these procedures will balance Section 222's privacy and competitive issues while not burdening or preventing U.S. carriers from offering one-stop shopping options.

13. The Commission declines to address issues raised by parties concerning the benchmark authorization conditions imposed on facilities-based carriers in the *Benchmarks Order* (62 FR 45758, August 29, 1997). The Commission will condition a carrier's facilities-based authorization to serve an affiliated market on the foreign carrier offering U.S.-licensed international carriers a settlement rate for the affiliated market at or below the relevant benchmark adopted in the *Benchmarks Order*.

14. The Commission addresses the issue of whether to apply its benchmark condition to authorizations to provide switched resale service from the United States to an affiliated market, which was not resolved in the *Benchmarks Order*. The Commission declines to apply the settlement rate benchmark condition to switched resale providers. The Commission finds that a switched reseller is less likely to attempt a predatory price squeeze. The Commission also finds here that it would be easier to detect a price squeeze in the switched resale context than in the facilities-based contest. The easier detection should deter switched resellers from attempting a price squeeze and will allow the Commission to take action in the event a carrier does attempt a price squeeze. The Commission will monitor the switched resale market carefully, and if it finds substantial evidence of anticompetitive behavior that causes harm to competition and consumers in the U.S. market, it may reconsider its decision not to apply the benchmark condition to the provision of switched resale. The Commission also adopts a quarterly traffic and revenue reporting requirement that applies to switched resellers that possess market power on the foreign end of the route and that have settlement rates with U.S. carriers.

15. The Commission adopts a dominant carrier regulatory framework aimed at detecting and deterring anticompetitive behavior in the U.S. market by foreign carriers and their

affiliated U.S. carriers. It will retain a single-tier dominant carrier regulatory approach and classify any U.S.-licensed carriers as dominant on a particular route if it is affiliated with a foreign carrier that possesses market power in a relevant market on the foreign end of that route. The Commission did not adopt its proposal to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information. The Commission adopts its tentative conclusion to continue its current regulatory treatment of co-marketing and other non-equity business arrangements between U.S. carriers and their foreign counterparts that affect the provision of U.S. international services. The Commission also found that it would be an unnecessary burden to apply dominant classification to all non-equity arrangements absent a finding of substantial risk of competitive harm. The Commission also declined to adopt a filing requirement for non-equity business relationships.

16. The Commission adopts a number of competitive safeguards as part of its dominant carrier regulatory framework. Dominant foreign-affiliated carriers will be permitted to file tariffs on one day's notice with a presumption of lawfulness rather than the current fourteen-day advance notice. The Commission also eliminates its prior approval requirement for circuit additions and discontinuances on the dominant route. The Commission declines to adopt a quarterly notification of circuit additions or discontinuances requirement. If the Commission finds that an affiliated carrier is engaged in anticompetitive behavior, it may apply the prior approval requirement on that route.

17. Although the Commission currently has in place a number of safeguards to prevent anticompetitive behavior, it finds that a minimal level of structural separation for dominant carriers is necessary. The Commission will require a foreign-affiliated U.S. international carrier regulated as dominant to provide service in the U.S. market through a corporation that is separate from the foreign affiliate, maintain separate books of account, and not jointly own switching and transmission facilities with its foreign carrier affiliate.

18. The *Order* imposes a number of reporting requirements to assist the Commission in monitoring and detecting anticompetitive behavior. Foreign-affiliated dominant carriers will be required to file quarterly traffic and revenue reports for their dominant routes. The Commission requires that each dominant foreign-affiliated carrier file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services it procures from its foreign affiliate, including, but not limited to, correspondent or other basic facilities procured on behalf of customers of joint venture offerings. Although the Commission does not dictate the format for the provisioning and maintenance reports, the Commission describes the information that it requires. The Commission directs the International Bureau to adopt a standard reporting manual if it feels that one would be helpful, and permits the Bureau to modify the contents of the filing requirements as necessary. Carriers subject to this requirement will be able to seek a protective order to ensure that parties to whom confidential information is made available limit the persons who will have access to the information and the purposes for which the information will be used.

19. All dominant foreign-affiliated facilities-based carriers will file quarterly circuit status reports. Although the Commission proposed quarterly notifications of circuit changes, the quarterly circuit status reports will provide information that can be more readily compared to the information provided by all U.S. international carriers on an annual basis under Section 43.82 of our rules. The Commission does not require dominant foreign-affiliated private line resale carriers to file quarterly circuit status reports, given that they rely on underlying U.S. facilities-based carriers to make arrangements with their affiliated carriers. The Commission directs the International Bureau to modify the Section 43.82 reporting manual as necessary to accommodate these changes. The Commission recognizes that the quarterly circuit status reports contain commercially sensitive information similar to the provisioning and maintenance reports. Thus, the Commission will allow dominant foreign-affiliated carriers to request the standard protective order for the three quarterly circuit status reports that dominant foreign-affiliated carriers must file.

20. The Commission does not adopt an expedited procedure to prevent competitive harm in the U.S. market. Rather, the Commission will rely on the various remedies currently available for addressing anticompetitive conduct. The Commission does, however, adopt a general rule that would enable it to impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes. The Commission notes that it is presently reviewing its rules to ensure that the Commission provides a forum for the prompt resolution of all formal complaints against telecommunications carriers involving claims of unreasonably discriminatory or otherwise unlawful conduct in violation of the Communications Act or its rules.

21. In the *Flexibility Order* (62 FR 5535, February 6, 1997), the Commission developed a new approach for permitting alternative settlement arrangements. In this proceeding, the Commission will no longer apply the ECO test as a threshold standard for determining when to permit accounting rate flexibility. Instead, it will apply a rebuttable presumption that flexibility is permitted for carriers from WTO Member countries. In order to rebut this presumption, a party opposing a flexible arrangement must demonstrate that the foreign carrier is not subject to competition in its home market from multiple (more than one) facilities-based carriers that possess the ability to terminate international traffic and serve existing customers in the foreign market. The Commission also makes minor changes to conform its procedures for U.S. carriers to enter into an alternative payment arrangements, and it will apply the new policies and procedures to all flexibility petitions pending before the Commission in any procedural status at the time the new rules become effective. The Commission will continue to apply the safeguards developed in the *Flexibility Order* (62 FR 5535, February 6, 1997). The Commission will continue to allow the proponent of an alternative settlement arrangement with a carrier from a WTO Member country to make an alternative showing where the presumption in favor of flexibility can be rebutted.

22. The *Order* streamlines the Section 214 applications of carriers that demonstrate clearly and convincingly that the foreign carrier affiliate has less than a 50 percent market share in reach relevant terminating market in the destination foreign country (international, intercity, and local exchange access). Streamlined processing of Section 214 applications will be available to any applicant whose foreign affiliate is from a WTO Member country if the applicant requests authority only to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers. Streamlining will be available for foreign-affiliated carriers not otherwise eligible for streamlined processing as long as the applicant

certifies that it will comply with the dominant carrier regulations of the *Order*. In addition, the Commission will streamline applications for assignments and transfers of control of Section 214 authorizations in circumstances where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing. The Commission will streamline Section 310(b)(4) requests when they meet the criteria described in the *Order*. In all circumstances, Commission staff will have discretion to deem an application ineligible for streamlined processing either because it raises market power concerns or because an Executive Branch agency raises concerns with respect to issues within its expertise. In such cases the Commission will issue a public notice that the application has been removed from the streamlined process, and within ninety days of the public notice it will either issue an order acting upon the application or provide public notice that, because the application raises issues of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

23. The Commission amends its rules to raise the level of foreign ownership that requires prior notification from 10 percent to greater than 25 percent. This change will eliminate the requirement that authorized carriers notify the Commission before accepting foreign carrier investments of 25 percent or less. An authorized carrier will, however, be required to notify the Commission sixty days before it, or a company that owns more than 25 percent of it, acquires a direct or indirect controlling interest in a foreign carrier.

24. The Commission dismisses arguments that the Commission's public interest analysis is invalid under the General Agreement on Trade in Services (GATS). The Commission states that the *Order* establishes the parameters for reviewing applications to provide international services. The Commission also found that its safeguards are consistent with the GATS.

25. Finally, the Commission disposes of the pending petitions for reconsideration of the *Foreign Carrier Entry Order* because of their close relationship with the substance of this proceeding.

26. The Commission states that it will largely rely on reporting requirements, rather than restrictions on capacity changes or service options, to prevent carriers from causing competitive harm in the U.S. market. The Commission declines to adopt its proposal for a supplemental tier of dominant carrier safeguards for U.S. carriers affiliated with foreign carriers that do not face facilities-based competition on the foreign end of a particular route. The Commission retains authority to impose sanctions, in the event it finds evidence of anticompetitive conduct.

Final Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. This analysis also serves as the FRFA for the issues disposed of here on reconsideration of the *Foreign Carrier Entry Order.*

Need for, and Objectives of, the Rules and Policies Adopted Here

28. This Report and Order and Order on Reconsideration adopts a liberalized standard for participation by foreign and foreign-affiliated entities in the U.S. telecommunications markets. This open entry standard will apply to the provision of international telecommunications services under Section 214 of the Communications Act, indirect foreign ownership of common carrier radio licensees under Section 310(b)(4), and cable landing licenses under the Submarine Cable Landing License Act. It also revises the Commission's regulatory safeguards governing the provision of international telecommunications services in light of recent changes in the world's telecommunications market and the Commission's liberalized standard for participation by foreign and foreign-affiliated entities. The Commission has deemed these changes appropriate in light of the recent World Trade Organization (WTO) Basic Telecommunications Services Agreement and the worldwide trend toward deregulation and competition in the provision of telecommunications services. Our objective is to increase competition in the U.S. telecommunications markets while minimizing the risk of anticompetitive harm and encouraging foreign governments to open their telecommunications markets. In light of the changed circumstances that will result from the WTO Basic Telecom Agreement and our nearly two years of experience with our current rules on market entry and regulation of foreign-affiliated entities, we find that reducing entry barriers for applicants affiliated with entities from WTO Member countries is the appropriate way to accomplish that objective. The Commission believes that it is no longer necessary to apply the ''effective competitive opportunities'' (ECO) test developed in the 1995 *Foreign Carrier Entry Order* to countries that are Members of the WTO. Instead, we will rely primarily on regulatory safeguards and benchmark settlement rates to reduce the potential for anticompetitive conduct in the U.S. market. We revise some of those safeguards in this Order.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

29. No comments were submitted specifically in response to the IRFA. Nevertheless, we have considered, in developing these rules and policies, any potential significant economic impact on small entities. We have attempted to minimize the burdens imposed on all entities, including small entities, in order to promote participation by new entrants in the U.S. telecommunications markets.

30. NextWave raised comments in response to the Notice specific to the impact of our policy toward indirect foreign investment in C-block and F-block licensees. Those blocks, known as ''entrepreneur'' blocks, are reserved for small businesses and entrepreneurs. NextWave states that it and other entrepreneurial carriers are dependent on financing from a variety of sources, including foreign investment, and that access to foreign capital is vital to their financial viability. NextWave argues that indirect foreign investment in C-block and F-block licensees presents ''no conceivable risk to competition'' because those licenses are held by entrepreneurs who are new entrants into the markets. NextWave proposes that, for that reason, the Commission should conclude that indirect foreign investment in C-block and F-block personal communications systems (PCS) licensees by any entity whose home market is a WTO Member country serves the public interest and should not be subject to prior Commission approval. NextWave also urges the Commission, in the alternative, to establish an expedited process and timetable for addressing applications to exceed the 25 percent benchmark for indirect foreign ownership of common carrier wireless licensees.

31. Telephone and Data Systems (TDS) proposed that the Commission permit without prior approval any amount of indirect foreign ownership of common carrier radio licensees held in the form of registered securities when

the foreign investor is not a carrier and comes from one of the 64 other WTO Member countries that has committed to enforce fair rules of competition for basic telecommunications. Under TDS's proposal, the Commission would continue to require prior approval for investors from other WTO Member countries, for investors from non-WTO countries, and from all foreign carriers. TDS suggested that we scrutinize filings with the Securities and Exchange Commission to monitor foreign ownership of registered securities and that we rely on revocation, instead of prior approval, to protect the public interest pursuant to Section 310(b)(4). TDS states that adoption of its proposal would significantly reduce burdens on common carrier radio licensees, who currently must research the nationalities of their individual shareholders in order to remain in compliance with the restrictions on foreign ownership.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

32. We received no comments in response to our estimates in the IRFA of the number of small entities to which the proposed rules would apply. We conclude that the IRFA's estimates are the best available estimates of the number of small entities that the rules we adopt here will affect and that those estimates are sufficiently useful in enabling us to attempt to minimize the economic impact of our rules on small entities.

33. The RFA generally defines *small entity* as having the same meaning as the terms *small business, small organization, and small governmental jurisdiction* and defines small business as having the same meaning as the term small business concern under section 3 of the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. The Small Business Act defines *small business concern* as one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

34. The rules adopted in this Order apply only to entities providing international common carrier services pursuant to Section 214 of the Communications Act; entities providing domestic or international wireless common carrier, aeronautical enroute, or aeronautical fixed services under Section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act.

35. Because the small incumbent local exchange carriers (LECs) subject to these rules are either dominant in their fields of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definitions of *small entity* and small business concern. Accordingly, our use of the terms small entities and *small businesses* does not encompass small incumbent LECs. Out of an abundance of caution, however, for the purposes of this FRFA, we will consider small incumbent LECs to be within this analysis, where a small incumbent LEC is any incumbent LEC that arguably might be defined by the SBA as a ''small business concern.''

Section 214 International Common Carrier Services

36. Entities providing international common carrier service pursuant to Section 214 of the Act fall into the SBA's Standard Industrial Classification (SIC) categories for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (SIC 4813). The SBA's definition of *small entity* for those categories is one with fewer than 1,500 employees. We discuss below the number of small entities falling within these two subcategories that may be affected by the rules adopted in this *Order.*

37. The most reliable source of information regarding the number of international common carriers is the data that we collect annually in connection with the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet).* In 1995, 445 toll carriers filed TRS fund worksheets. We believe that between 50 and 200 carriers failed to file TRS fund worksheets. We believe also that fewer than 10 toll carriers had 1,500 or more employees. Thus, at most 635 international carriers would be classified as small entities. Many TRS filers, however, are affiliated with other carriers, and therefore the number of aggregated carriers is far fewer than the preceding estimate. Of the 445 toll filers, 239 reported no carrier affiliates. Adding 50 non-filers gives a lower estimate of 289 international carriers that would be classified as small entities. Thus, our best estimate of the total number of small entities is between 289 and 635. We are unable at this time to estimate with greater precision the number of international carriers that would qualify as small business entities under the SBA's definition. While not all of these entities may have provided international service in 1995, we expect that many of these entities will seek to do so in the future, as will additional entrants into the market.

b. Title III Common Carrier Services

38. *Cellular licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

39. *220 MHz Radio Services.* Because the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years, and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. Given the fact that nearly all radiotelephone companies employ fewer than 1,000 employees, with respect to the approximately 3,800 incumbent licensees in this service, we will consider them to be small businesses under the SBA definition.

40. *Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging services. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition

applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. At present, there are approximately 74,000 Common Carrier Paging licensees. We estimate that the majority of common carrier paging providers would qualify as small businesses under the SBA definition.

41. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that fewer than 117 mobile service carriers are small entities.

42. *Broadband Personal Communications Services (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined *small entity* in the auctions for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenue of not more than $15 million for the preceding three calendar years. These regulations defining *small entity* in the context of broadband PCS auctions have been approved by the SBA. No small business within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small businesses won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

43. *Narrowband PCS.* The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of $40 million or less. For purposes of this FRFA, the Commission is utilizing the SBA definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons. Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this FRFA, that all the remaining narrowband PCS licenses will be awarded to small entities.

44. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in Sections 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them have fewer than 1,500 employees.

45. *Air-Ground Radiotelephone.* The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

46. *Specialized Mobile Radio Licensees (SMR).* Pursuant to Section 90.814(b)(1) of our rules, the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations or how many of these providers have annual revenues of less than $15 million. We do know that one of these firms has over $15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities.

47. *Microwave Video Services.* Microwave services includes common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier licensees. Inasmuch as the Commission has not yet defined *small business* with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 employees. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of common carrier microwave service providers that would qualify under the SBA's definition. We therefore estimate that there are fewer than 22,015 small common carrier licensees in the microwave video services.

48. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. Some of those licensees are common carriers. We are unable at this

time to estimate the number of licensees that would qualify as small under the SBA's definition.

49. *Local Multipoint Distribution Service (LMDS).* The Commission has so far licensed only one licensee in this service, and that licensee is not providing service as a common carrier. There will be a total of 986 LMDS licenses. Licensees will be permitted to decide whether to provide common carrier service, and we have no way of estimating how many will choose to do so. Because there will be no restrictions on the number of licenses a given entity may acquire, we have no way of estimating how many total licensees there will be. We also cannot estimate the number of common carrier licensees that will qualify as small entities.

50. *Space Stations (Geostationary).* Very few systems are currently operated on a common carrier basis. Because we do not collect information on annual revenue or number of employees of all these licensees, we cannot estimate with precision the number of such licensees that may constitute a small business entity. It is likely that no more than one such entity that is currently operating as a common carrier would constitute a small business entity. There may be a small increase in the number of such entities in the future as a result of recent licensing action in the Ka-band.

51. *Space Stations (Non-geostationary).* These systems by and large do not operate as common carriers. Because we do not collect information on annual revenue or number of employees, we cannot estimate with precision whether any carrier that may choose to operate on a common carrier basis constitutes a small business entity. The trend is for such systems to operate on a non-common carrier basis. These systems, of which there will be a limited number, by and large are not yet operational and are still being licensed and constructed.

52. *Earth Stations.* The vast majority of earth stations licensed by the Commission are not operated on a common carrier basis. Earth stations that communicate with non-geostationary and Ka-band satellite systems may operate on a common carrier basis but these systems are not yet operational and are still being licensed and constructed. We are unable to estimate at this time the number of earth stations communicating with such systems that may operate on a common carrier basis and, of those, the number that will be licensed to small business entities.

c. Aeronautical Enroute and Aeronautical Fixed Licenses

53. The Commission has not adopted a definition of small business specific to the aeronautical enroute and aeronautical fixed services. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are 45 licensees providing aeronautical enroute and aeronautical fixed services, including Aeronautical Radio Inc. (ARINC) and its affiliates. All of the licensees are small businesses except ARINC, which has approximately 2,000 employees. We therefore conclude that there are 44 small businesses providing aeronautical enroute and aeronautical fixed services.

d. Submarine Cable Landing Licenses

54. The new rules and policies adopted in this *Order* will affect all holders of and future applicants for cable landing licenses, whether or not they operate their cables as common carriers. It is difficult to estimate how many applications for cable landing licenses will be filed in coming years, but that number will likely increase if we adopt our proposal to lower the barriers to granting licenses for cables to WTO Member countries. Since 1992, there have been approximately 40 applications for cable landing licenses. The total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Our rules will also permit more current licensees to accept additional investment from entities from WTO Member countries.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

55. The rules and policies adopted in this *Report and Order and Order on Reconsideration* will affect large and small entities. We will require that U.S. carriers whose foreign affiliates have market power maintain or provide certain records regarding their foreign affiliates. Our rules will in most cases reduce the burdens that are currently imposed on such carriers, and we anticipate that the remaining requirements will not impose a significant economic burden, particularly on small entities. A variety of skills may be required to comply with the proposed requirements, but all of the skills that may be required are of the type needed to conduct a carrier's normal course of business. No additional outside professional skills should be required, with the possible exception of preparing an initial Section 214 or cable landing license application and of preparing a submission for our consideration under Section 310(b)(4), most of which will be simplified by the rules and policies we adopt here.

56. An applicant for a Section 214 authorization or a cable landing license will no longer be required to show either that an affiliated foreign carrier lacks market power or that the destination country provides effective competitive opportunities (ECO) to U.S. carriers so long as it shows that the destination country is a Member of the World Trade Organization. Similarly, entities holding or seeking to hold common carrier wireless licenses or aeronautical enroute or aeronautical fixed licenses that have more than 25 percent indirect foreign investment will not need to demonstrate that the home markets of the foreign investor or investors from WTO Members offer effective competitive opportunities for U.S. investors in the analogous service sector.

57. Authorized international common carriers will no longer be required to notify the Commission before accepting investments by foreign carriers (or their affiliates) between 10 percent and 25 percent. We have retained a requirement that authorized carriers notify the Commission before accepting investment greater than 25 percent. We have added a requirement that authorized carriers notify the Commission before they (or their affiliates) acquire a direct or indirect controlling interest in a foreign carrier; previously, those interests were subject only to a post hoc notification requirement. We continue to require authorized carriers to notify the Commission within 30 days after acquiring a direct or indirect interest greater than 25 percent in a foreign carrier if the acquisition of that interest has not otherwise been reported.

58. We have narrowed the application of our ''No Special Concessions'' rule, which prohibits carriers from entering into exclusive arrangements with foreign carriers. That rule will now apply only to carriers' dealings with foreign carriers that have sufficient market power in their home markets to adversely affect competition in the U.S. market. Carriers wishing to enter into alternative settlement arrangements with foreign carriers operating in WTO Member countries will presumptively be allowed to do so. That presumption may be overcome where an opponent demonstrates that there are not multiple facilities-based carriers operating in the foreign carrier's market.

59. To ensure fair competition among authorized carriers and to be consistent with our policy governing the confidentiality of competing carrier information, all U.S. carriers will be prohibited from receiving proprietary or confidential information about competing U.S. carriers obtained by any foreign carrier in the course of its regular business dealings with the competing U.S. carrier, unless the U.S. carrier provides specific written permission. We will also require U.S. carriers desiring to make use of foreign-derived customer proprietary network information (CPNI) pertaining to a specific U.S. customer to first obtain approval from that customer and notify that customer that the customer may require the carrier to disclose the CPNI to unaffiliated third parties.

60. An authorized carrier affiliated with a foreign carrier will be subject to additional requirements. Its authorization to serve the affiliated market will be conditioned on the foreign affiliate's offering to all U.S.-licensed carriers a settlement rate at or below the benchmark adopted for that country in the Commission's recent *Benchmarks Order*. Foreign-affiliated carriers classified as dominant are subject to additional reporting, recordkeeping, and compliance requirements. In this *Order*, we substantially reduce the initial showing that a foreign-affiliated carrier must make in order to be presumptively classified as non-dominant by adopting a presumption that a foreign carrier with less than 50 percent market share in certain relevant terminating markets does not have sufficient market power to affect competition adversely in the U.S. market. We remove existing dominant carrier requirements that we find to be unnecessarily burdensome and adopt a narrowly tailored dominant carrier framework designed to address specific concerns of anticompetitive behavior. We replace the requirement that dominant carriers file tariffs on fourteen days' advance notice with a one-day advance notice requirement, and we will accord these tariff filings a presumption of lawfulness. We will no longer require foreign-affiliated carriers to obtain Commission approval before adding or discontinuing circuits on the dominant route. We require dominant carriers to provide service on the affiliated route through a corporation that is separate from its foreign affiliate, maintain separate books of account, and not jointly own switching or transmission facilities with its foreign affiliate. Carriers regulated as dominant will be required to file quarterly traffic and revenue reports, provisioning and maintenance reports, and circuit status reports on the dominant affiliated route. We decline to adopt the proposal in the Notice to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information.

61. Finally, we impose a reporting requirement on switched resellers that are affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market. We will require these resellers to file quarterly traffic and revenue reports for their switched resale traffic on the affiliated route.

Federal Rules That May Duplicate, Overlap, or Conflict With the Rules Adopted Here

62. None.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. We have taken significant steps to minimize the procedural burdens imposed on all affected entities. The application of the rules we adopt in this *Order* does not vary depending on the size of the entities involved. Some regulations may be more burdensome on large carriers than on small carriers because large carriers may be more likely to be dominant or to operate on a facilities basis than are small carriers. That is, small carriers may be more likely to operate as resellers of switched international services, which are less likely to be subject to our most stringent regulation.

64. The revisions to our policies toward evaluating Section 214 and cable landing license applications will significantly reduce burdens on many current and potential international common carriers. A foreign-affiliated carrier seeking to serve an affiliated route will no longer be required to show either that its affiliate lacks market power or that the destination country provides effective competitive opportunities (ECO) to U.S. carriers so long as it shows that the destination country is a Member of the World Trade Organization. We believe this to be a minimal burden for most small entities and a significantly lesser burden than the detailed showings required to demonstrate either that the affiliate lacks market power or that the destination country provides ECO. The ECO test, in particular, has proven to be unusually burdensome both on applicants and on the Commission.

65. Similarly, the revisions to our policy toward evaluating Section 310(b)(4) requests by common carrier radio licensees and aeronautical licensees to accept indirect foreign investment greater than 25 percent will significantly reduce the burdens on licensees (and prospective licensees) seeking to accept investment from entities in WTO Member countries. Those applicants will no longer be required to show that the home market of the investor offers effective competitive opportunities for U.S. investors in the analogous service sector. This will make those applications much simpler and less time-consuming and, more importantly, will make it much easier for licensees to accept foreign investment and for prospective licensees to plan their business affairs. Common carrier radio licensees will continue to be required to seek Commission approval before accepting indirect foreign investment above a level for which they have previously received Commission approval.

66. We have taken steps to facilitate entry into the U.S. market for international telecommunications services by small carriers. Small carriers often enter the market, at least initially, by reselling the switched services of other authorized international carriers. In this *Order*, we change our procedural rules to afford streamlined processing to any applicant whose foreign affiliate is from a WTO Member country if the applicant requests authority to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers. We also will streamline process the Section 214 application of any foreign-affiliated applicant whose affiliate is from a WTO Member and that demonstrates clearly and convincingly that the foreign affiliate has less than a 50 percent market share in certain relevant terminating markets in the destination foreign country. In addition, we will streamline process the Section 214 application of any applicant whose affiliate is from a WTO Member and is not otherwise eligible for streamlined processing if the applicant certifies that it will comply with our dominant carrier regulations. Streamlined applications, unless they are removed from the streamlined process, are granted 35 days from the date they are placed on public notice.

67. In revising our regulations that apply to authorized international common carriers, we have developed a targeted approach designed to monitor and detect anticompetitive behavior in the U.S. market without imposing regulations that are more burdensome than necessary. In doing so, we have

attempted to minimize burdens on entities that are unlikely to pose a threat to competition. We also have removed restrictions on whole categories of activities that we have concluded do not pose a threat to competition in the developing competitive marketplace. Our approach relies in large part on reporting requirements, rather than restrictions on capacity changes or service options, to prevent affiliated carriers from causing competitive harms in the U.S. international services market.

68. We have significantly reduced the scope of our rule that prohibits carriers from entering into certain exclusive arrangements with foreign carriers. Our ''No Special Concessions'' rule will now prohibit accepting certain specified arrangements only from foreign carriers that have sufficient market power in their home markets to adversely affect competition in the U.S. market. We adopt a presumption that foreign carriers with less than 50 percent market share in the relevant terminating markets do not have such sufficient market power. We anticipate that delineating those arrangements that are subject to the prohibition and adopting this presumption will significantly clarify the circumstances in which authorized carriers will be permitted to accept special concessions from foreign carriers. This more targeted rule also will allow authorized carriers substantially more flexibility in arranging their business affairs.

69. Carriers wishing to enter into alternative settlement arrangements with foreign carriers operating in WTO Member countries will presumptively be allowed to do so. This presumption may be overcome by a demonstration that there are not multiple facilities-based carriers operating in the foreign carrier's market. We expect to allow alternative settlements more as a rule than as an exception, and the issue of whether there are multiple facilities-based carriers operating in the foreign market will be less burdensome than the issue of whether the foreign market offers effective competitive opportunities, which is the standard being replaced.

70. We have declined, in this *Order*, to adopt certain proposals in the Notice that would have restricted the business strategies of carriers classified as dominant. Instead, we will impose reporting requirements that will enable us to detect and deter anticompetitive behavior. We have declined to adopt proposals in the *Notice* to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information. We have found that such proscriptive safeguards would be unduly burdensome and could unnecessarily impede business activities. We choose to rely instead on the general prohibition on accepting special concessions combined with additional reporting and disclosure requirements, instead of proscriptive safeguards, for carriers with foreign affiliations. We have also relieved carriers of the requirement to notify the Commission of investments by foreign carriers of 10 percent or more; they now must report an investment by a foreign carrier only when that investment exceeds 25 percent. We conclude that none of the safeguards we impose specifically on carriers classified as dominant will impose significant economic burdens.

71. We have also declined to impose on switched resellers a condition that their foreign affiliates maintain settlement rates at or below the benchmark settlement rates we adopted in the *Benchmarks Order*. We find that such a condition would be unnecessarily burdensome inasmuch as resellers have less ability to engage in anticompetitive conduct than facilities-based carriers and we have a greater ability to detect anticompetitive conduct by switched resellers. Imposing a benchmark condition on switched resellers would impose significant economic impact on resellers, many of whom are small entities, that could prevent some new entrants from entering the U.S. market and affect the ability of existing carriers to provide service. To address concerns about traffic distortions related to resale, however, we have decided to impose a requirement on switched resellers that are affiliated with a carrier that has sufficient market power to affect competition adversely in the U.S. market. We will require those resellers to file quarterly traffic and revenue reports for their traffic on the affiliated route in order to enable the Commission to determine whether switched resellers are engaging in anticompetitive conduct.

72. In the Notice, we sought comment on whether to adopt, as an additional dominant carrier safeguard, some level of structural separation between a U.S. carrier and its affiliated foreign carrier. We adopt here a requirement that a foreign-affiliated U.S. international carrier regulated as dominant provide service in the U.S. market through a corporation that is separate from the foreign affiliate, maintain separate books of account, and not jointly own switching and transmission facilities with its foreign carrier affiliate. We find that, without such separation, discrimination, cost-misallocation, and the possibility of a predatory price squeeze by such a foreign-affiliated carrier would have the potential to cause substantial harm to consumers, competition, and production efficiency in the U.S. international services market. These requirements will not impose a significant burden on such carriers because most foreign-affiliated carriers operating in the United States do so in a manner that is consistent with the requirements we adopt here. We have considered imposing more stringent structural separation requirements but have found them to be unnecessary and to potentially impose a significant burden on foreign-affiliated carriers that operate in the U.S. market.

73. We are unable to adopt NextWave's proposal to state that indirect foreign investment in C-block and F-block PCS licensees by any entity whose home market is a WTO Member country serves the public interest and will not be subject to prior Commission approval. We have found that prior approval is necessary in all instances of indirect foreign investment in excess of 25 percent because of the need to review such investments for national security, law enforcement, foreign policy, and trade concerns as well as for the exceptional case that poses a very high risk to competition. We do, however, adopt NextWave's alternative proposal to establish an expedited process and timetable for addressing those applications: These applications will generally be added to the International Bureau's streamlined process and usually granted within 35 days from the date the International Bureau places the application on public notice. We expect that application of our open entry standard and streamlined process will both minimize procedural burdens on small entities and present substantial new opportunities for obtaining foreign capital.

74. We are unable to adopt TDS's proposal to disregard investments in common carrier radio licensees by non-carriers held as publicly traded securities. We accept the concerns of Executive Branch agencies that a prior approval process is necessary for all investments and that even small investments in publicly traded securities could, if aggregated, nevertheless create a degree of control or influence over a licensee that would be contrary to U.S. national security or law enforcement issues.

75. We have also decided not to adopt a policy that a common carrier radio licensee need not seek Commission approval before accepting increases in indirect foreign ownership once they

have obtained Commission authority to exceed 25 percent indirect foreign ownership. We have determined that every such increase requires Commission review in order to consider the effect of the ownership on national security and law enforcement interests.

76. We conclude that these steps we have taken to minimize significant economic impact on small entities will advance the small business goals of Section 257 of the Act, as added by the Telecommunications Act of 1996.

Report to Congress

77. The Commission will send a copy of this Report and Order and Order on Reconsideration, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). A summary of this Report and Order and Order on Reconsideration, and a copy of this FRFA, will also be published in the **Federal Register**, *see* 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act of 1995 Analysis

78. This Report and Order contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due February 9, 1998. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information.

79. Public reporting burden for the collections of information is estimated as follows:

OMB Control Number: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Type of Review: Revision of existing collection.

Respondents: Business or other For-Profit.

Number of Respondents: 3,251.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 145,895 hours.

Estimated costs per respondent: $3,192.

Needs and Uses: The information collections pertaining to Parts 1 and 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections contained in amendments to § 63.10 of the Commission's rules are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power. The information collected pursuant to part 61 of the rules is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934.

80. The information collections under § 310(b)(4) of the Act are necessary to determine, under that section, whether a greater than 25 percent indirect foreign ownership interest in a U.S. common carrier ratio licensee would be inconsistent with the public interest.

81. We do not anticipate that the rules will have any impact on the paperwork burden imposed under the Commission's *Flexibility Policy* established in the *Fourth Report and Order*, CC Docket No. 90–337, Phase I (62 FR 5535, February 6, 1997), OMB Control Nos. 3060–0160 and 3060–0764.

Ordering Clauses

82. Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 4(i), 201, 203, 205, 214, 303(r), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 152, 154(i), 201, 205, 214, 303(r), 310, the policies, rules, and requirements discussed herein *are adopted* and parts 43, 63, and 64, 47 CFR parts 43, 63, and 64 *are revised*.

83. *It is further ordered* that authority is delegated to the Chief, International Bureau as discussed in this Order.

84. *It is further ordered* that the petitions for reconsideration in IB Docket No. 95–22 *are granted* in part, *denied* in part, and *deferred* as discussed in this Order.

85. *It is further ordered* that the Commission's Office of Managing Director shall send a copy of this Report and Order and Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. *It is further ordered* that the policies, rules, and requirements established in this decision shall take effect January 8, 1998 or in accordance with the requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507. The Commission will publish a document at a later date announcing the effective date. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998.

List of Subjects in 47 CFR Parts 43, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Parts 43, 63, and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 continues to read as follows:

Authority: 47 U.S.C. 154.

2. § 43.51 is amended by revising paragraph (d) to read as follows:

§ 43.51 Contracts and concessions.

* * * * *

(d) Any U.S. carrier that interconnects an international private line to the U.S. public switched network, at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief of the International Bureau a certified statement containing the number and type (e.g., a 64-kbps circuit) of private lines interconnected in such a manner. The certified statement shall specify the number and type of interconnected private lines on a country specific basis. The identity of the customer need not be reported, and the Commission will treat the country of origin information as confidential. Carriers need not file their contracts for such interconnections, unless they are specifically requested to do so. These reports shall be filed on a consolidated basis on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched

basic services over private lines at any time during a particular reporting period are exempt from this requirement.

3. § 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) Each common carrier engaged in the resale of international switched services that has an affiliation with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. For purposes of this paragraph, ''affiliation'' is defined in § 63.18(h)(1)(i) of this chapter and ''foreign carrier'' is defined in § 63.18(h)(1)(ii) of this chapter.

* * * * *

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, 533 unless otherwise noted.

2. § 63.10 is revised to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

(a) Unless otherwise determined by the Commission, any party authorized to provide an international communications service under this part shall be classified as either dominant or non-dominant for the provision of particular international communications services on particular routes as set forth in this section. The rules set forth in this section shall also apply to determinations of regulatory status pursuant to §§ 63.11 and 63.13. For purposes of paragraphs (a)(1) through (a)(3) of this section, ''affiliation'' and ''foreign carrier'' are defined as set forth in § 63.18(h)(1)(i) and (ii), respectively. For purposes of paragraphs (a)(2) and (a)(3) of this section, the relevant markets on the foreign end of a U.S. international route include: international transport facilities or services, including cable landing station access and backhaul facilities; inter-city facilities or services; and local access facilities or services on the foreign end of a particular route.

(1) A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) shall presumptively be considered non-dominant for the provision of international communications services on that route;

(2) Except as provided in paragraph (a)(4) of this section, a U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is a monopoly provider of communications services in a relevant market in a destination country shall presumptively be classified as dominant for the provision of international communications services on that route; and

(3) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is not a monopoly provider of communications services in a relevant market in a destination country and that seeks to be regulated as non-dominant on that route bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. If the U.S. carrier demonstrates that the foreign affiliate lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier shall presumptively be classified as non-dominant.

(4) A carrier that is authorized under this part to provide to a particular destination country a particular international communications service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service. The existence of an affiliation with a U.S. facilities-based international carrier shall be assessed in accordance with the definition of affiliation contained in § 63.18(h)(1)(i) of this chapter, except that the phrase ''U.S. facilities-based international carrier'' shall be substituted for the phrase ''foreign carrier.''

(b) Any party that seeks to defeat the presumptions in paragraph (a) of this section shall bear the burden of proof upon any issue it raises as to the proper classification of the U.S. carrier.

(c) Any carrier classified as dominant for the provision of particular services on particular routes under this section shall comply with the following requirements in its provision of such services on each such route:

(1) File international service tariffs on one day's notice without cost support;

(2) Provide services as an entity that is separate from its foreign carrier affiliate, in compliance with the following requirements:

(i) The authorized carrier shall maintain separate books of account from its affiliated foreign carrier. These separate books of account do not need to comply with Part 32 of this chapter; and

(ii) The authorized carrier shall not jointly own transmission or switching facilities with its affiliated foreign carrier. Nothing in this section prohibits the U.S. carrier from sharing personnel or other resources or assets with its foreign affiliate;

(3) File quarterly reports on traffic and revenue, consistent with the reporting requirements authorized pursuant to § 43.61, within 90 days from the end of each calendar quarter;

(4) File quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from its foreign carrier affiliate or from an allied foreign carrier, including, but not limited to, those it procures on behalf of customers of any joint venture for the provision of U.S. basic or enhanced services in which the authorized carrier and the foreign carrier participate, within 90 days from the end of each calendar quarter. These reports should contain the following: the types of circuits and services provided; the average time intervals between order and delivery; the number of outages and intervals between fault report and service restoration; and for circuits used to provide international switched service, the percentage of ''peak hour'' calls that failed to complete;

(5) In the case of an authorized facilities-based carrier, file quarterly circuit status reports within 90 days from the end of each calendar quarter in the format set out by the § 43.82 annual circuit status manual, with two exceptions: activated or idle circuits must be reported on a facility-by-facility basis; and the derived circuits need not be specified in the three quarterly reports due on June 30, September 30, and December 31. For purposes of this paragraph, ''facilities-based carrier'' is defined in § 63.18 note 2 to paragraph (h).

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall include with its filings separate computer diskettes for the reports required by paragraphs (c)(3) and (c)(5), in the format specified by the § 43.61 and § 43.82 filing manuals, respectively. The carrier shall also file one paper copy of these reports, accompanied by the appropriate computer diskettes, with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

3. § 63.11 is revised to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire an affiliation with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part shall notify the Commission sixty days prior to the consummation of either of the following acquisitions of direct or indirect controlling interests in or by foreign carriers:

(1) acquisition of a direct or indirect controlling interest in a foreign carrier (as defined in § 63.18(h)(1)(ii)) by the authorized carrier, or by any entity that directly or indirectly controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) acquisition of a direct or indirect interest in the capital stock of the authorized carrier by a foreign carrier or by an entity that directly or indirectly controls a foreign carrier where the interest would create an affiliation within the meaning of § 63.18(h)(1)(i)(B).

(b) Any carrier authorized to provide international communications service under this part that becomes affiliated with a foreign carrier within the meaning of § 63.18(h)(1) that has not previously notified the Commission pursuant to this section or § 63.18 shall notify the Commission within thirty days after acquiring the affiliation. In particular, acquisition by an authorized carrier (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the authorized carrier) of a direct or indirect interest in a foreign carrier that is greater than 25 percent but not controlling is subject to this paragraph but not to paragraph (a).

(c) The notification required under paragraphs (a) and (b) of this section shall contain a list of the affiliated foreign carriers named in paragraphs (a) and (b) of this section and shall state individually the country or countries in which the foreign carriers are authorized to provide telecommunications services to the public. It shall additionally specify which, if any, of these countries is a Member of the World Trade Organization; which, if any, of these countries the U.S. carrier is authorized to serve under this part; what services it is authorized to provide to each such country; and the FCC File No. under which each such authorization was granted. The notification shall certify to the information specified in this paragraph.

(1) The carrier also should specify, where applicable, those countries named in paragraph (c) of this section for which it provides a specified international communications service solely through the resale of the international switched services of U.S. facilities-based carriers with which the resale carrier does not have an affiliation. Such an affiliation is defined in § 63.18(h)(1)(i), except that the phrase ''U.S. facilities-based international carrier'' shall be substituted for the phrase ''foreign carrier.''

(2) The carrier shall also submit with its notification:

(i) The ownership information as required to be submitted pursuant to § 63.18(h)(2); and

(ii) A ''special concessions'' certification as required to be submitted pursuant to § 63.18(i).

(d) In order to retain non-dominant status on the affiliated route, the carrier notifying the Commission of a foreign carrier affiliation under paragraph (a) or (b) of this section should provide information to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(e) After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within 14 days of the public notice.

(1) In the case of a notification filed under paragraph (a) of this section, the Commission, if it deems it necessary, will by written order at any time before or after the submission of public comments impose dominant carrier regulation on the carrier for the affiliated routes based on the provisions of § 63.10.

(2) The Commission will, unless it notifies the carrier in writing within 30 days of issuance of the public notice that the investment raises a substantial and material question of fact as to whether the investment serves the public interest, convenience and necessity, presume the investment to be in the public interest. If notified that the investment raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed an application under § 63.18 and submitted the information specified under § 63.18(h)(5) or (6) as applicable, and § 63.18(h)(7) and (8), as applicable, and the Commission has approved the application by formal written order.

(f) All authorized carriers are responsible for the continuing accuracy of certifications with regard to affiliations with foreign carriers made under this section and under § 63.18. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible, and in any event within thirty days, file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided, *except that* the carrier shall immediately inform the Commission if at any time the representations in the ''special concessions'' certification provided under paragraph (c)(2)(ii) of this section or § 63.18(i) are no longer true. *See* § 63.18(i). This information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10.

Note to § 63.11: ''Control'' as used in this section includes actual working control in whatever manner exercised and is not limited to majority stock ownership.

4. § 63.12 is revised to read as follows:

§ 63.12 Processing of international Section 214 applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 shall be granted by the Commission 35 days after the date of public notice listing the application as accepted for filing.

(b) Issuance of public notice of the grant shall be deemed the issuance of Section 214 certification to the applicant, which may commence operation on the 36th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission.

(c) The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:

(1) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a foreign carrier in a destination market, and the Commission has not yet made a determination as to whether that foreign carrier lacks sufficient market power in that destination market to affect competition adversely in the U.S. market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(ii) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4); or

(iii) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(2) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a dominant U.S. carrier whose international switched or private line services the applicant seeks authority to resell (either directly or indirectly through the resale of another reseller's services), unless the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10 (without prejudice to its right to petition for reclassification at a later date); or

(3) The applicant seeks authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines; or

(4) The application is formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) The pleading is filed within the time period prescribed for the filing of objections or comments; or

(5) The Commission has informed the applicant in writing, within 28 days after the date of public notice accepting the application for filing, that the application is not eligible for streamlined processing under this section.

(d) Any complete application that is subject to paragraph (c) of this section will be acted upon only by formal written order, and operation for which such authorization is sought may not commence except in accordance with such order. The Commission will issue public notice that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will issue an order acting upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

5. § 63.13 is revised to read as follows:

§ 63.13 Procedures for modifying regulatory classification of U.S. international carriers from dominant to non-dominant.

Any party that desires to modify its regulatory status from dominant to non-dominant for the provision of particular international communications services on a particular route should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

6. § 63.14 is revised to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, as described in paragraph (c) of this section, and from agreeing to accept special concessions in the future. For purposes of this section, ''foreign carrier'' is defined in § 63.18(h)(1)(ii).

(b) For purposes of this section and §§ 63.11(c)(2)(ii) and 63.18(i), a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

(1) Operating agreements for the provision of basic services;

(2) Distribution arrangements or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times; or

(3) Any information, prior to public disclosure, about a foreign carrier's basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country's domestic network by U.S. carriers or their U.S. customers.

(c) A U.S. carrier that seeks to enter a special concession with a foreign carrier bears the burden of submitting information, as part of the requirement to file the agreement with the Commission pursuant to § 43.51, sufficient to demonstrate that the foreign carrier lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. If the U.S. carrier makes a showing that the foreign carrier lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier will presumptively be allowed to agree to accept the special concession.

(d) Any party that seeks to defeat the presumption in paragraph (c) of this section shall bear the burden of proof upon any issue it raises as to the ability of the foreign carrier to affect competition adversely in the U.S. market.

7. § 63.17 is amended by revising paragraph (b) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, a U.S. common carrier, whether a reseller or facilities-based carrier, may engage in ''switched hubbing'' to countries for which the Commission has not authorized the provision of switched basic services over private lines provided the carrier complies with the following conditions:

(1) U.S.-outbound switched traffic shall be routed over the carrier's authorized U.S. international private lines to a country for which the Commission has authorized the provision of switched services over private lines (i.e., the ''hub'' country), and then forwarded to the third country only by taking at published rates and reselling the international message telephone service (IMTS) of a carrier in the hub country;

(2) U.S.-inbound switched traffic shall be carried to a country for which the Commission has authorized the provision of switched services over private lines (i.e., the ''hub'' country) as part of the IMTS traffic flow from a third country and then terminated in the United States over U.S. international private lines from the hub country;

(3) U.S. common carriers that route U.S.-billed traffic via switched hubbing shall tariff their service on a ''through'' basis between the United States and the

ultimate point of origination or termination;

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(6).

8. § 63.18 is amended to revise paragraphs (e), (h) and (i) and to add new paragraph (k) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) One or more of the following statements, as pertinent:

(1) If applying for authority to acquire interests in facilities previously authorized by the Commission in order to provide international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to the terms and conditions of paragraph (e)(1) of this section.

(ii) Comply with the following terms and conditions:

(A) Authority to provide services to all international points under this part extends to those countries for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If an applicant is affiliated with a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)), the applicant shall not commence service on any such route until it receives specific authority to do so under paragraph (e)(6) of this section.

(B) The applicant may only provide service using half-circuits on appropriately licensed U.S. common and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. 34 et al.) provided that these facilities do not appear on an exclusion list published by the Commission and any necessary overseas connecting facilities. Applicants may not use non-U.S. licensed facilities unless and until the Commission specifically approves their use and so indicates on the exclusion list, and only then for service to the countries indicated thereon.

(C) The applicant may provide service to any country not included on an exclusion list published by the Commission.

(D) The applicant may provide international basic switched, private line, data, television and business services.

(E) The authority granted under this paragraph shall be subject to all Commission rules and regulations and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See § 63.12.

(2) If applying for authority to resell the international services of authorized U.S. common carriers for the provision of international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to the terms and conditions of § 63.18(e)(2).

(ii) Comply with the following terms and conditions:

(A) Authority to provide resold services to all international points under this part extends to those countries and services for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstances, in which case an applicant shall not commence service until it receives specific authority to do so under paragraph (e)(6) of this section:

(*1*) An application to provide switched resold services to a non-WTO Member country where the applicant is affiliated with a foreign carrier; and

(*2*) An application to resell private line services to a destination market where the applicant is affiliated with a foreign carrier and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)).

(B) The applicant may resell the international services of any authorized common carrier, except affiliated carriers regulated as dominant on the route to be served, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points;

(C) The applicant may resell private line services for the provision of international switched basic services only in circumstances where the Commission has specifically authorized the provision of switched basic services over private lines to the particular country at the foreign end of the private line. In making determinations about particular destination countries, the Commission will follow the policies adopted in IB Docket Nos. 96–261 and 97–142 (these documents are available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov). The Commission will provide public notice of its decisions to authorize the provision of switched basic services over private lines to particular countries.

(D) The authority granted under this paragraph shall be subject to all Commission rules and regulations, including the limitation in § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See §§ 63.12, 63.21.

(3) If applying for authority to provide international switched basic services over resold private lines between the United States and a WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 or that the country affords resale opportunities equivalent to those available under U.S. law. If applying for authority to provide international switched basic services over resold private lines between the United States and a non-WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 and that the country affords resale opportunities equivalent to those available under U.S. law. With regard to showing that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. Parties must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

(i) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(ii) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(iii) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(iv) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(4) Any carrier authorized under this section to acquire and operate international private line facilities other than through resale may use those private lines to provide switched basic services only in circumstances where the Commission has previously authorized the provision of switched services over private lines to the particular country at the foreign end of the private line. The Commission will provide public notice of its decisions to authorize the provision of switched services over private lines to particular countries pursuant to its policies adopted in IB Docket Nos. 96–261 and 97–142. This provision is subject to the following exceptions and conditions:

(i) The applicant shall not initiate such service on a particular route absent a grant of specific authority under paragraph (e)(6) of this section in circumstances where the applicant is affiliated with a carrier in the country at the foreign end of the private line and the Commission has not determined that the foreign carrier lacks sufficient market power in the country at the foreign end of the private line to affect competition adversely in the U.S. market. See § 63.10(a).

(ii) The applicant is subject to all applicable Commission rules and regulations, including the limitation § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See §§ 63.12, 63.21.

(A) Except as provided in paragraph (e)(4)(ii)(B) of this section, any carrier that seeks to provide international switched basic services over its authorized private line facilities between the United States and a WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 or that the country affords resale opportunities equivalent to those available under U.S. law. With regard to showing that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include the information required by paragraph (e)(3) of this section.

(B) No formal application is required under paragraph (e)(4) of this section in circumstances where the carrier's previously authorized private line facility is interconnected to the public switched network only on one end—either the U.S. or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(5) If applying for authority to acquire facilities through the transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Paragraph (g) of this section is not applicable, and only the transferee/assignee needs to complete paragraphs (h) through (k) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(6) If applying for authority to acquire facilities or to provide services not covered by § 63.18(e) (1) through (5), the applicant shall provide a description of the facilities and services for which it seeks authorization. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization. Applicants for new submarine cable facilities also shall include a list of the proposed owners of the cable, their voting interests and ownership interests by segment in the cable.

* * * * *

(h) A certification as to whether or not the applicant is, or has an affiliation with, a foreign carrier.

(1) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier. For purposes of this certification:

(i) Affiliation is defined to include:

(A) A greater than 25 percent ownership of capital stock, or controlling interest at any level, by the applicant, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier; or

(B) A greater than 25 percent ownership of capital stock, or controlling interest at any level, in the applicant by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier; or by two or more foreign carriers investing in the applicant in the same manner in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of basic international telecommunications services in the United States. A U.S. carrier also will be considered to be affiliated with a foreign carrier where the foreign carrier controls, is controlled by, or is under common control with a second foreign carrier already found to be affiliated with that U.S. carrier under this section.

(ii) Foreign carrier is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC–88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(2) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its ten percent or greater direct and indirect shareholders or other equity holders and identify any interlocking directorates.

(3) Each applicant that proposes to acquire facilities through the resale of the international switched or private

line services of another U.S. carrier shall additionally certify as to whether or not the applicant has an affiliation with the U.S. carrier(s) whose facilities-based service(s) the applicant proposes to resell (either directly or indirectly through the resale of another reseller's service). For purposes of this paragraph, affiliation is defined as in paragraph (h)(1)(i) of this section, except that the phrase ''U.S. facilities-based international carrier'' shall be substituted for the phrase ''foreign carrier.''

(4) Each applicant and carrier authorized to provide international communications service under this part is responsible for the continuing accuracy of the certifications required by paragraphs (h)(1) through (3) of this section. Whenever the substance of any such certification is no longer accurate, the applicant/carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10.

(5) Any applicant that seeks to operate as a U.S. facilities-based international carrier to a particular country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph (h)(1)(i)(B) of this section with a foreign carrier in that country shall provide the following information:

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's international facilities-based market. An effective competitive opportunities demonstration should address the following factors:

(A) The legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(B) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services;

(C) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(*1*) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(*2*) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(*3*) Protection of carrier and customer proprietary information;

(D) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(E) Any other factors the applicant deems relevant to its demonstration.

(6) Any applicant that proposes to resell the international switched or non-interconnected private line services of another U.S. carrier for the purpose of providing international communications services to the named foreign country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph (h)(1)(i)(B) of this section with a foreign carrier in the destination country shall provide the following information (see also paragraph (h)(7) of this section):

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to resell international switched or non-interconnected private line services, respectively. An effective competitive opportunities demonstration should address the following factors:

(A) The legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(B) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for the provision of the relevant resale service;

(C) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(*1*) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(*2*) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(*3*) Protection of carrier and customer proprietary information;

(D) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(E) Any other factors the applicant deems relevant to its demonstration.

(7) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international communications services to the named foreign country and that is a foreign carrier in that country or has an affiliation with a foreign carrier in that country shall either provide in its application a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(8) With respect to regulatory classification under § 63.10, each applicant that certifies that it has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of particular international communications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(i) Each applicant shall certify that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future. This certification shall be viewed as an ongoing representation to the Commission, and applicants/carriers shall immediately inform the Commission if at any time the representations in their certifications are no longer true. Failure to so inform the Commission will be deemed a material misrepresentation to the Commission. For purposes of this section, ''special concession'' is defined in § 63.14(b) and ''foreign carrier'' is defined in paragraph (h)(1)(ii) of this section.

* * * * *

(k) If the applicant desires streamlined processing pursuant to

§ 63.12, a statement of how the application qualifies for streamlined processing.

9. § 63.21 is amended to revise paragraph (a); to redesignate paragraph (e) as paragraph (h); and to add paragraphs (e), (f), and (g) to read as follows:

§ 63.21 Conditions applicable to international Section 214 authorizations.

* * * * *

(a) Carriers may not use their authorized facilities-based or resold international private lines for the provision of switched basic services between the United States and a WTO Member country unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities or that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 (this document is available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov). Carriers may not use their authorized facilities-based or resold international private lines for the provision of switched basic services between the United States and a non-WTO Member country unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities and that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261. (*See* § 63.18(e)(3)–(4).) If at any time the Commission finds, after an initial determination of compliance for a particular country, that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, carriers shall comply with enforcement actions taken by the Commission. This condition shall not apply to a carrier's use of its authorized facilities-based private lines to provide service as described in § 63.18(e)(4)(ii)(B).

* * * * *

(e) Authorized carriers may not access or make use of specific U.S. customer proprietary network information that is derived from a foreign network unless the carrier obtains approval from that U.S. customer. In seeking to obtain approval, the carrier must notify the U.S. customer that the customer may require the carrier to disclose the information to unaffiliated third parties upon written request by the customer.

(f) Authorized carriers may not receive from a foreign carrier any proprietary or confidential information pertaining to a competing U.S. carrier, obtained by the foreign carrier in the course of its normal business dealings, unless the competing U.S. carrier provides its permission in writing.

(g) The Commission reserves the right to review a carrier's authorization, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation of Part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k). Interpret or apply 47 U.S.C. 201, 218, 226, 228, 254(k), 276 unless otherwise noted.

2. § 64.1001 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 64.1001 International settlements policy and modification requests.

* * * * *

(b) If the accounting rate referred to in § 43.51(e)(1) of this chapter is lower than the accounting rate in effect in the operating agreement of another carrier providing service to or from the same foreign point, and there is no modification in the other terms and conditions referred to in § 43.51(e)(1) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(c) If the amendment referred to in § 43.51(e)(2) of this chapter is a simple reduction in the accounting rate, and there is no modification in the other terms and conditions referred to in § 43.51(e)(2) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(d) If the operating agreement or amendment referred to in §§ 43.51(e)(1) and (e)(2) of this chapter is not subject to notification under paragraphs (b) and (c) of this section, the carrier must file a modification request under paragraph (f) of this section.

* * * * *

3. § 64.1002 is revised to read as follows:

§ 64.1002 Alternative settlement arrangements.

(a) A communications common carrier engaged in providing switched voice, telex, telegraph, or packet switched service between the United States and a foreign point may seek approval to enter into an operating agreement with a foreign telecommunications administration containing an alternative settlement arrangement that does not comply with the requirements of § 43.51(e)(1) and § 63.14 of this chapter and § 64.1001 by filing a petition for declaratory ruling in compliance with the requirements of this section.

(b) A petition for declaratory ruling must contain the following:

(1) Information to demonstrate that:

(i) The alternative settlement arrangement is on a route between the United States and a World Trade Organization Member; or

(ii) For an alternative settlement arrangement on a route between the United States and a non-World Trade Organization Member:

(A) The Commission has made a previous determination that the effective competitive opportunities test in § 63.18(h)(5)(iii) of this chapter has been satisfied on the route covered by the alternative settlement arrangement; or

(B) The effective competitive opportunities test in § 63.18(h)(5)(iii) of this chapter is satisfied on the route covered by the alternative settlement arrangement; or

(iii) The alternative settlement arrangement is otherwise in the public interest.

(2) A certification as to whether the alternative settlement arrangement affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies.

(3) A certification as to whether the parties to the alternative settlement arrangement are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(4) A copy of the alternative settlement arrangement if it affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies, or if it is between parties that are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or that are involved in a non-equity joint venture affecting the provision of basic services on the route

to which the alternative settlement arrangement applies.

(5) A summary of the terms and conditions of the alternative settlement arrangement if it does not come within the scope of paragraph (b)(4) of this section. However, upon request by the International Bureau, a full copy of such alternative settlement arrangement must be forwarded promptly to the International Bureau.

(c) If the petition for declaratory ruling contains a certification under paragraph (b)(1)(i) of this section that the proposed alternative settlement arrangement is for service on a route between the United States and a World Trade Organization Member, a party may oppose the petition under paragraph (f) of this section with a showing that the participating carrier on the foreign end of the route does not have multiple (more than one) international facilities-based competitors. In such a case, the petitioning party may make a showing under paragraph (b)(1)(iii) of this section, pursuant to paragraph (g) of this section.

(d) An alternative settlement arrangement filed for approval under this section cannot become effective until the petition for declaratory ruling required by paragraph (a) of this section has been granted under paragraph (f) of this section.

(e) On the same day the petition for declaratory ruling has been filed, the filing carrier must serve a copy of the petition on all carriers providing the same or similar service with the foreign carrier identified in the petition.

(f) All petitions for declaratory ruling shall be subject to a 21-day pleading period for objections or comments, commencing the day after the date of public notice listing the petition as accepted for filing. A petition for declaratory ruling shall be deemed granted as of the 28th day without any formal staff action provided that:

(1) The petition is not formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) the pleading is filed within the time period prescribed; or

(2) The International Bureau has not notified the filing carrier that grant of the petition may not serve the public interest and that implementation of the proposed alternative settlement arrangement must await formal staff action on the petition.

(g) If objections or comments are filed, the petitioning carrier may file a response pursuant to § 1.45 of this chapter. Petitions that are formally opposed must await formal action by the International Bureau before the proposed alternative settlement arrangement may be implemented.

[FR Doc. 97–32013 Filed 12–5–97; 10:03 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[DA 97–2528]

Petitions for Waiver of the Four-Digit Carrier Identification Code (CIC) Implementation Schedule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 3, 1997, the Network Services Division of the Commission's Common Carrier Bureau, released an Order granting extensions to certain local exchange carriers (LECs) of the January 1, 1998 deadline for implementing four-digit carrier code identification codes (CIC). The Order is intended to respond to waiver requests received from certain LECs.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION:

Adopted: December 2, 1997
Released: December 3, 1997

I. Introduction

Carrier identification codes (CICs) are numeric codes that enable local exchange carriers (LECs) providing interstate interexchange access services to identify the interstate interexchange carrier (IXC) that the originating caller wishes to use to transmit its interstate call.[1] LECs use the CICs to route traffic to the proper IXC and to bill for the interstate access service provided. CICs facilitate competition by enabling callers to use the services of telecommunications service providers either by presubscription or by dialing a carrier access code, or CAC, which incorporates that carrier's unique Feature Group D CIC.[2] Originally, CICs were unique three-digit codes (XXX) and CACs were five-digit codes incorporating the CIC (10XXX).

2. On April 11, 1997, in the *CICs Second Report and Order,*[3] the Commission approved an industry plan to expand Feature Group D CICs from three to four digits on the ground that it was a reasonable method of meeting future demand for CICs as the supply of three-digit codes was exhausted.[4] The industry agreed that as the expansion from three to four-digit CICs occurred, and as carriers replaced their five-digit CACs with seven-digit CACs, a transition, or permissive dialing period, was needed. The industry, however, was unable to agree on the length of the transition.[5] In its 1994 *CICs NPRM,* the Commission proposed a six-year period.[6] In the *CICs Second Report and Order,* however, because of the rapidly depleting pool of available three-digit

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[1] Most access providers are incumbent local exchange carriers (incumbent LECs) that provide access customers with circuits that interconnect to the local carrier's public switched telephone network. Commission rules require that ''interstate access services should be made available on a non-discriminatory basis and, as far as possible, without distinction between end user and IC [interexchange carrier] customers.'' Petition of First Data Resources, Inc., Regarding the Availability of Feature Group B Access Service to End Users, *Memorandum Opinion and Order,* 1986 WL 291786 (rel. May 28, 1986) at para. 13. Typical access customers include interexchange carriers, wireless carriers, competitive access providers, and large corporate users.

[2] Feature Group D access, or ''equal access,'' is known in the industry as ''One-plus'' (''1+'') dialing. This type of access allows calls to be routed directly to the caller's carrier of choice. Feature Group D/equal access offers features, including presubscription, not generally available through other forms of access. In 1988, the Industry Carriers Compatibility Forum (ICCF), operating under the Alliance for Telecommunications Industry Solutions (ATIS), Carrier Liaison Committee (CLC), began to develop a two-part plan to convert and expand three-digit Feature Group D CICs to four digits. The second part of the plan, originally scheduled to occur in the third quarter of 1993, contemplated expansion of three-digit Feature Group D CICs to four digits and eventual elimination of the 10XXX CAC format. *See* Letter of October 13, 1989, from G.J. Handler, Vice President, Network Planning, Bell Communications Research (Bellcore), to Richard M. Firestone, Chief, Common Carrier Bureau, Federal Communications Commission at 2 (Handler Letter). The ICCF's plan was published in 1991. *See Expansion of Carrier Identification Code Capacity for Feature Group D (FGD),* Bellcore Technical Reference TR–NWT–001050, Issue 1 (April 1991) (ICCF Expansion Plan, April 1991). In 1994, the expansion of Feature Group D CICs was scheduled for the first quarter of 1995. *See* Administration of the North American Numbering Plan, *Notice of Proposed Rulemaking,* CC Docket No. 92–237, 9 FCC Rcd 2068, 2076 (1994) (59 FR 24103 (5/10/94) (*CICs NPRM*). In January 1997, the ICCF became part of the Network Interconnection Interoperability Forum (NIIF), which also operates under the auspices of the CLC.

[3] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Second Report and Order,* CC Docket No. 92–237, FCC 97–125 (released April 11, 1997) (62 FR 19056 (April 18, 1997)) (*CICs Second Report and Order*).

[4] *See CICs Second Report and Order* at para. 28.

[5] *See* Handler Letter at 2.

[6] *See CICs NPRM,* 9 FCC Rcd at 2076–77.

CICs, the Commission decided to end the transition on January 1, 1998. The Commission also denied requests to ''grandfather'' (*i.e.*, to permit carriers to continue to use) previously assigned three-digit CICs that are in use at the end of the transition.[7] The Commission's decisions were intended to advance the pro-competitive objectives of the Communications Act of 1934 (the Communications Act or the Act),[8] as amended by the Telecommunications Act of 1996 (1996 Act).[9]

3. On October 22, 1997, in the *CICs Order on Reconsideration*,[10] the Commission modified the decision in the *CICs Second Report and Order* regarding the length of the transition during which three and four-digit Feature Group D CICs co-exist, and created a ''two-step'' end to the transition to four-digit CICs. Under the *CICs Order on Reconsideration*, all LECs that provide equal access must have completed switch changes to recognize four-digit CICs by January 1, 1998, the end of the first phase. The second phase, which ends on June 30, 1998, is intended to allow interexchange carriers time to prepare their networks for, and educate their customers about, the replacement of three-digit CICs by four-digit CICs. After June 30, 1998, only four-digit CICs and seven-digit CACs will be recognized. The Commission also affirmed its decision in the *CICs Second Report and Order* not to grandfather the use of three-digit CICs and five-digit CACs that are in use during the transition.

4. Several small LECs have filed petitions for waiver of the *CICs Second Report and Order*'s January 1, 1998 conversion deadline.[11] Hardy requests an extension until April 30, 1998; Pierce requests an extension until May 1, 1998; Northeast, Pioneer, Hartington, and Jefferson request extensions until June 30, 1998; Hartman requests an extension until July 1, 1998; and Clarks, Eustis/Home, and Henderson request extensions until January 1, 2000. The LECs generally argue that extensions are warranted because the operating system software they need to upgrade to four-digit CIC capability is not currently available and is very costly.

5. In this Order, we conclude that, for the reasons discussed below: (1) The petitions of Hardy, Pierce, Northeast, and Pioneer should be granted, by extending for them the switch conversion deadline for four-digit CIC capability for the time periods requested; (2) the petitions of Hartman, Clarks, Eustis/Home, and Henderson should be granted in part, by extending for them the switch conversion deadline for four-digit CIC capability, but only until June 30, 1998, and should be denied in part, to the extent they request extensions beyond that date; and (3) the petitions of Hartington and Jefferson should be dismissed as moot.

II. Petitions

A. Request for Extension Until April 30, 1998

6. Hardy, an incumbent LEC serving rural areas of West Virginia,[12] that has provided interLATA equal access since 1992,[13] requests an extension of the switch conversion deadline until April 30, 1998. Hardy claims that it is technically infeasible for it to comply with the January 1, 1998 deadline. Hardy currently operates an Alcatel E–10-Five switch. Hardy asserts that the software required to accept four-digit Feature Group D CICs was not available when it purchased the interLATA equal access software from Altcatel in March 1990.[14] Hardy asserts that Alcatel has notified Hardy that it will not provide the software upgrades for four-digit CICs.[15] Hardy explains that it needs to comply with the Rural Utilities Service (RUS) requirements (a process it started in early 1997) to deploy a new switch that would include, among other things, four-digit CIC capability. Hardy asserts that the requested extension of time until April 30, 1998, will enable it to continue its efforts to select, purchase, and deploy a switch capable of providing the four-digit CIC function.[16]

B. Request for Extension Until May 1, 1998

7. Pierce, a small, rural LEC providing equal access, requests an extension of the switch conversion deadline until May 1, 1998.[17] Pierce claims that it is technically and economically infeasible for it to comply with the January 1, 1998 deadline.[18] Pierce operates two Northern Telecom (Nortel) switches, using operating systems software release version 404.41, which does not have four-digit CIC capability.[19] Pierce asserts that since May 1997, it has made good faith efforts to purchase an updated release, but that Nortel has not responded to confirm either price or acceptance of the order for the software.[20] Pierce asserts that it is currently trying to negotiate with Nortel. Once contracts are signed, a lead time of 180 days is expected, which Pierce claims would mean a mid-1998 implementation date.[21] Pierce asserts that the Commission's grant of a waiver in the present case is consistent with Commission precedent recognizing the technical and economic burdens imposed on small and rural LECs in implementing software upgrades and granting waivers when those burdens are demonstrated.[22]

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[7] *See CICs Second Report and Order* at para. 46.

[8] 47 U.S.C. §§ 151 *et seq.*

[9] Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996); *see* Joint Explanatory Statement of the Committee of the Conference, H.R. Rep. No. 458, 104th Cong., 2d Sess. 113.

[10] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking,* CC Docket No. 92–237, FCC 97–386 (released October 22, 1997) (62 FR 55762 (October 28, 1997)) (*CICs Order on Reconsideration*). Prior to the release of the *CICs Order on Reconsideration,* on October 9, 1997, the Commission issued a *Further Notice of Proposed Rulemaking* in this docket. *See* Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Further Notice of Proposed Rulemaking and Order,* CC Docket No. 92–237, FCC 97–364 (released October 9, 1997) (62 FR 54817 (October 22, 1997) (*CICs FNPRM*). The issues raised in the *CICs FNPRM* are unrelated to the waiver petitions we address here.

[11] *See Petition for Limited Waiver of Clarks Telecommunications Co.,* CC Docket No. 92–237, October 2, 1997 (*Clarks Petition*); *Joint Petition for Limited Waiver of Eustis Telephone Exchange, Inc. and Home Telephone Company of Nebraska,* CC Docket No. 92–237, October 2, 1997 (*Eustis/Home Petition*); *Petition for Limited Waiver of Hardy Telecommunications, Inc.,* CC Docket No. 92–237, September 23, 1997 (*Hardy Petition*); *Response to Inquiry by Hardy Telecommunications, Inc.,* CC Docket No. 92–237, September 29, 1997 (*Hardy Response to Inquiry); Petition for Waiver of Hartington Telecommunications Co., Inc.,* CC Docket No. 92–237, October 9, 1997 (*Hartington Petition*); *Errata to Petition for Waiver of Hartington Telecommunications Co., Inc.,* CC Docket No. 92–237, October 10, 1997 (*Hartington Errata to Petition); Petition for Limited Waiver of Hartman Telephone Exchanges, Inc.,* CC Docket No. 92–237, October 6, 1997 (*Hartman Petition); Petition for Limited Waiver of Henderson Telephone Company,* CC Docket No. 92–237, October 2, 1997 (*Henderson Petition); Petition for Waiver of Jefferson Telephone Company,* CC Docket No. 92–237, October 23, 1997 (*Jefferson Petition); Petition for Limited Waiver of Pierce Telephone Company, Inc.,* CC Docket No. 92–237, November 5, 1997 (*Pierce Petition); Petition for Waiver of Northeast Nebraska Telephone Company,* CC Docket No. 92–237, November 5, 1997 (*Northeast Petition); Petition for Limited Waiver of Pioneer Telephone Cooperative, Inc.,* CC Docket No. 92–237, November 14, 1997 (*Pioneer Petition*).

[12] Hardy serves approximately 2,600 access lines. *See Hardy Petition* at 1.

[13] *See Hardy Response to Inquiry.*

[14] *See id.*

[15] *See Hardy Petition* at 2–3.

[16] *See id.*

[17] *See Pierce Petition* at 1 and 3. Pierce serves approximately 1,870 access lines. *See id.* at n.3.

[18] *See id.* at 1–2.

[19] *See id.* at 2.

[20] *See id.* at 3.

[21] *See id.*

[22] *See id.* at 3–4, *citing* Rules and Policies Regarding Calling Number Identification Service—Caller ID, *Order and Fourth Notice of Proposed Rulemaking,* CC Docket No. 91–281, 10 FCC Rcd 13796, 13808 (1995)(60 FR 63491 (December 11, 1995)) (*Caller ID Order*).

C. Requests for Extensions until June 30, 1998

8. Northeast, Pioneer, Hartington, and Jefferson, all rural LECs, request extensions of the switch conversion deadline until June 30, 1998. Northeast and Hartington serve Nebraska, Pioneer serves Oklahoma, and Jefferson serves South Dakota.[23] Hartington and Jefferson assert that they do not provide Feature Group D equal access, because they have never received a request for equal access.[24] Northeast asserts that since April 15, 1997, it has provided equal access in three of its 12 exchanges, notwithstanding that it has never received a request for equal access.[25] Pioneer asserts that all of its 77 end offices were converted to equal access by May 1, 1996.[26] Pioneer asserts that 65 of its exchanges, serving approximately 86 percent of its access lines, are four-digit CIC capable.[27] Pioneer's extension request, therefore, applies to the 12 non-conforming exchanges.[28] Northeast asserts that the switching equipment providing equal access in each of the three exchanges is not four-digit CIC capable at this time.[29] Northeast, Hartington, and Jefferson all assert that no IXCs with four-digit CICs have shown an interest in serving their exchange areas.[30] Each argues that, even it were to receive a request for equal access, the market it serves is small and the company would be allowed three years after a bona fide request to begin providing equal access.[31] Northeast, Hartington and Jefferson all assert that, for these reasons, granting their waiver requests would not thwart the Commission's policy goal of expansion of competition in the interexchange market.[32] Northeast, Hartington, and Jefferson indicate that they have demonstrated an intent to implement four-digit CIC capability as soon as practicable.[33]

9. Northeast asserts that it began negotiations to replace switching equipment at its three equal access exchanges shortly after the Commission released the April 1997 *CICs Second Report and Order*.[34] Northeast asserts that, after months of negotiations, it ordered new, four-digit CIC capable, switching equipment for two of the exchanges in October 1997.[35] Northeast asserts that the equipment is scheduled to be delivered by mid-December 1997, and installed by mid-February 1998.[36] Northeast asserts that negotiations are ongoing for the third exchange.[37] Northeast asserts that for this exchange, it expects that the new, four-digit CIC compliant switch will be ordered shortly after Northeast's next board meeting on November 18, 1997, delivered in early 1998, and installed during the first quarter of 1998.[38] Northeast also asserts that it interprets the recent *CICs Order on Reconsideration and Second Further Notice of Proposed Rulemaking* as not requiring Northeast to comply with the January 1, 1998 conversion deadline, because it has never received a bona fide request for equal access.[39] Northeast asserts, therefore, that it may not need to request a waiver of the January 1, 1998 conversion deadline, but states that it is doing so, out of an abundance of caution.[40]

10. Pioneer asserts that grant of its request will allow Pioneer to complete its network reconfiguration and deploy new switch facilities in the most rational and efficient manner. This will, in turn, benefit its customers, who will be spared the costs of an abrupt change in Pioneer's plan.[41] Pioneer states that in January 1995, it began a series of network-wide equipment upgrades to bring new services to its customers, including the four-digit CIC function. Pioneer asserts that upon issuance of the *CICs Second Report and Order*, it accelerated its network conversion to four-digit CICs, a process it had anticipated being completed by the year 2000, under the originally proposed six-year transition.[42] Pioneer contends that its conversion process was delayed when an area code split was ordered, beginning on November 1, 1997, affecting 62 of its 77 exchanges.[43] For the 12 exchanges for which it seeks an extension, Pioneer argues that it would be economically infeasible to meet the January 1, 1998 deadline.[44] After exploring all reasonable alternatives, Pioneer asserts that additional time is needed, until June 30, 1998, to convert these 12 exchanges. Pioneer notes that its request would ensure compliance when the permissive dialing period ends, and would, therefore, mean that the only IXCs affected by the grant of this waiver request would be those IXCs using new four-digit CICs.[45]

11. Hartington has entered into a contract with Nortel for the purchase of four-digit CIC compliant switching equipment, but claims that installation and testing of the new equipment may not occur until March 1998, at the earliest.[46] Like Clarks and Eustis/Home, Jefferson uses Nortel operating systems software release version 403.31. Jefferson asserts that it discovered that to achieve four-digit CIC capability, an upgrade costing approximately $100,000 would be necessary.[47] Jefferson also notes that the company is in the process of being sold, and expresses concern about spending $100,000 on switching upgrades.[48]

D. Request for Extension Until July 1, 1998

12. Hartman, a small LEC[49] serving Nebraska that has provided equal access since 1995, requests an extension of the switch conversion deadline until July 1, 1998.[50] Hartman uses Nortel operating systems software release version 405.10, and argues that, to obtain four-digit CIC

[23] Northeast operates 4,120 access lines in twelve exchanges. *See Northeast Petition* at 2. Hartington operates 1,600 access lines serving 3,000 people. *See Hartington Petition* at 2. Pioneer serves approximately 50,000 access lines through 77 end offices. *See Pioneer Petition* at 2. Jefferson operates 550 access lines serving 1,100 people. *See Jefferson Petition* at 2.

[24] Hartington asserts that it does not pass CICs in its signalling (*Hartington Petition* at 2) and that Hartington customers make long distance calls through Feature Group C dialing arrangements. If customers wish to use the services of an IXC other than AT&T for interLATA calls, they may use either a credit card service or Feature Group B dialing arrangement (*Hartington Errata to Petition*). Jefferson asserts that its customers connect with competing long distance carriers through Feature Group B and C dialing. *See Jefferson Petition* at 2.

[25] *See Northeast Petition* at 2. These three exchanges have a total of 1,149 access lines. *See id.*

[26] *See Pioneer Petition* at 2. Pioneer asserts that it began the equal access conversion process in 1991. *Id.*

[27] *Id.* at 3.

[28] *Id.* These exchanges are Apache, Arnett, Buffalo, Canton, Chester, Drummond, Fort Supply, Gage, Longdale, Quinlan, Shattuck, and Waynoka.

[29] *See Northeast Petition* at 2.

[30] *See Northeast Petition* at 5; *Hartington Petition* at 3–4; *Jefferson Petition* at 4.

[31] *See Jefferson Petition* at 5–6; *Hartington Petition* at 4; *Jefferson Petition* at 4. Jefferson also notes that this is particularly true given that IXCs have until June 30, 1998 to convert their own services to four-digit CICs. *See Jefferson Petition* at 5–6.

[32] *See Northeast Petition* at 5–6; *Hartington Petition* at 3–4; *Jefferson Petition* at 4.

[33] *See Northeast Petition* at 7; *Hartington Petition* at 5; *Jefferson Petition* at 6.

[34] *See Northeast Petition* at 2.

[35] *See id.* at 2–3.

[36] *See id.* at 3. Northeast asserts that installation of new switching equipment is a more complicated and lengthy process than installation of software upgrades. *See id.* at n.5.

[37] *See id.* at 3.

[38] *See id.*

[39] *See id.* at 3–4, *citing CICs Order on Reconsideration* at n.75 and *CICs Second FNPRM* at para. 84.

[40] *See Northeast Petition* at 4.

[41] *See Pioneer Petition* at 9.

[42] *See id.* at 2–3.

[43] *Id.* at 3.

[44] *Id.* at 4.

[45] *Id.* at 4 and 9.

[46] *See Hartington Petition* at 2.

[47] *See Jefferson Petition* at 2 and n.3.

[48] *Id.* at 6.

[49] Hartman operates 450 access lines serving three exchanges on the Nebraska/Kansas border. *See Hartman Petition* at 3.

[50] *See id.* at 1.

capability, the company will need to upgrade this software and buy additional equipment.[51] Hartman asserts that, after months of negotiations, it has signed a contract with Nortel to upgrade to release 406.10, but argues that, because Nortel has been overwhelmed with upgrade requests, the delivery date for the upgrade is uncertain.[52] Hartman asserts that it has considered other manufacturers but has discovered that it would not be economical to purchase the equipment from them.[53] Like Pierce, Hartman refers to Commission precedent granting waivers when technical and economic burdens imposed on small and rural LECs in implementing software upgrades are demonstrated.[54]

E. Requests for Extension Until January 1, 2000

13. Clarks, Eustis/Home, and Henderson each request a two-year extension of the switch conversion deadline, until January 1, 2000. Each is a small LEC[55] that currently is providing equal access.[56] Each asserts that compliance with the January 1, 1998 conversion requirement is technically and economically infeasible because the operating system software needed to upgrade to four-digit CIC capability is not currently available and is very costly. None of the companies routinely performs upgrades to its Nortel switches, and each asserts that due to the large number of update requests, Nortel has a long waiting list of LECs seeking to obtain the new software releases.[57] Clarks and Eustis/Home both use Nortel operating systems software release version 403.31. They state that they have been considering upgrading to Nortel's operating systems software release version 410.10, but argue that the process is lengthy due to Nortel's long waiting list.[58] Eustis/Home asserts that it does not expect to receive the new release until mid-1998.[59] Henderson uses Nortel operating systems software release version 402.52. Henderson asserts that it expects a mid-1998 implementation, based on contract negotiations with Nortel. Henderson notes, however, that if it decides to purchase new equipment from another manufacturer, implementation could take several more months.[60] Like Pierce and Hartman, Clarks, Eustis/Home, and Henderson refer to Commission precedent granting waivers when technical and economic burdens imposed on small and rural LECs in implementing software upgrades are demonstrated.[61]

14. Clarks, Eustis/Home, and Henderson argue that to obtain four-digit CIC capability, they must upgrade software or hardware and purchase additional equipment. Clarks notes that it is considering purchasing a new switch, which requires completion of RUS requirements, followed by installation of the equipment. The total process assertedly would take 18–20 months.[62] Eustis/Home also argues that switch replacement would take 18–20 months.[63] Henderson asserts that it is making good faith efforts to purchase an updated release, but argues that Nortel has refused to deal with Henderson using the RUS contract, and negotiations are taking months.[64] Eustis/Home and Henderson assert that they have also consulted with Stromburg-Carlson and Mitel about updated releases.[65]

III. Discussion

15. The Commission may waive any provision of its rules, in whole or in part, if good cause is shown.[66] An applicant for waiver must demonstrate that special circumstances warrant a deviation from the general rule and that such deviation will serve the public interest.[67] In evaluating each petition for waiver before us here, we have weighed the following factors: the LEC's diligence in upgrading its switches; the availability from manufacturers of products required to accomplish the upgrade; and the impact of an extension of the conversion deadline on the IXCs served by the LEC's switches and on customers' ability to reach IXCs through CAC dialing.

16. *Requests for Extension of Hardy, Pierce, Northeast, Pioneer and Hartman.* We find that the petitions for waiver filed by Hardy, Pierce, Northeast, Pioneer, and Hartman demonstrate the special circumstances meriting a waiver of the January 1, 1998 conversion deadline. First, each has demonstrated that it is diligently working to upgrade or replace its switches. For example, Hardy initiated the RUS process to deploy a new switch with the four-digit CIC capability in early 1997, when it learned that its switch vendor does not provide software upgrades to implement four-digit CICs capability. Pierce has been working to purchase four-digit CIC capable upgrades since May 1997, shortly following the release of the *CICs Second Report and Order* establishing the January 1, 1998 deadline for LEC conversion to four-digit CICs. Similarly, Northeast states that it began negotiations to replace its switching equipment shortly after the release of the *CICs Second Report and Order* in April 1997. After months of negotiations, Northeast has now ordered new, four-digit CIC capable, switching equipment for two of its exchanges, expects to place an order for its third switch in November 1997, and anticipates installation of all of the required new equipment during the first quarter of 1998. Pioneer states that it began a series of network-wide equipment upgrades, that would include four-digit CIC capability, in January 1995 and accelerated that conversion following the release of the *CICs Second Report and Order.* Although its conversion process was delayed by an area code split, Pioneer requests an extension for only 12 of its 77 exchanges and only until the end of the permissive dialing period on June 30, 1998. Hartman indicates that it is making good faith efforts to purchase updated software; indeed, Hartman states that it has signed a contract with Nortel for an upgraded operating systems software release.

17. Second, based on their petitions, we conclude that Hardy, Pierce, Northeast, and Hartman have demonstrated that the product needed to accomplish the upgrade to their individual networks is not readily available from switch manufacturers, which has delayed their ability to meet the January 1, 1998 conversion deadline. In Hardy's case, Alcatel has notified it that it will not provide the software upgrades necessary to implement four-digit CIC capability. Thus, Hardy must select, purchase and deploy a new switch capable of providing the four-digit CIC function.

[51] *See id.* at 2–3.

[52] *Id.*

[53] *See id.*

[54] *See id.* at 4, *citing Caller Id Order, cited* at n.22, *supra.*

[55] Clarks and Henderson each serves 1000 access lines, and Eustis/Home combined serves 1300 access lines. *See Clarks Petition* at n.3; *Henderson Petition* at n.3; *Eustis/Home Petition* at n.3. Eustis and Home are commonly owned. *See Eustis/Home Petition* at 1.

[56] Clarks states that it has been providing equal access since 1989. Eustis/Home and Henderson do not indicate when they began providing equal access.

[57] *See Clarks Petition* at 3; *Eustis/Home Petition* at 3.

[58] *See Clarks Petition* at 3; *Eustis/Home Petition* at 3.

[59] *See Eustis/Home Petition* at 3.

[60] *See Henderson Petition* at 3.

[61] *See e.g., Clarks Petition* at 4, *citing Caller Id Order, cited* at n.22, *supra.*

[62] *See Clarks Petition* at 3.

[63] *See Eustis/Home Petition* at 3.

[64] *See Henderson Petition* at 3.

[65] *See Eustis/Home Petition* at 3.

[66] *See* 47 C.F.R. § 1.3.

[67] *Northeast Cellular Telephone Co.* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio* v. *FCC,* 418 F.2d 1153 (D.C. Cir. 1969).

Pierce has been unable to obtain from Nortel the product necessary to upgrade its Nortel switches. Pierce estimates that upgrades can be operational, however, 180 days after a contract with Nortel is signed. Northeast maintains that replacement switching equipment was purchased only after months of negotiations. Hartman asserts that, because Nortel has been overwhelmed with upgrade requests, the delivery date for its upgrade is uncertain. In Pioneer's case, although it does not claim that replacement switching equipment is unavailable, we note that Pioneer also is replacing its switching equipment, rather than implementing an upgrade to its existing equipment. Thus, we conclude that the absence of this claim is not dispositive of its petition.

18. Third, we conclude that the impact of an extension of the conversion deadline on the IXCs served by Hardy, Pierce, Northeast, Pioneer, and Hartman, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed by a denial of their petitions for waiver. Hardy, Pierce, Northeast, Pioneer, and Hartman are small, rural LECs serving a limited number of access lines. Hardy operates in West Virginia, serving 2,600 access lines. Pierce, a local exchange carrier in Nebraska, serves about 1,870 access lines. Northeast also operates in Nebraska, serving about 1,150 access lines. Hartman operates 450 access lines serving three exchanges on the Nebraska/Kansas border. Pioneer operates in Oklahoma, and although it serves approximately 50,000 access lines, only 14 percent of those access lines are affected by its request for an extension of the January 1, 1998 conversion deadline.[68] Hardy, Pierce, Northeast and Pioneer have not requested an extension of the conversion deadline beyond June 30, 1998. Accordingly, the grant of their requested waivers will not affect or interfere with the end of the permissive dialing period on June 30, 1998. Hartman requests an extension of the conversion deadline until July 1, 1998, only one day after the end of the permissive dialing period. As explained below, we grant Hartman an extension until June 30, 1998, which will not affect or interfere with the end of the permissive dialing period.

19. We recognize that the grant of these extensions will shorten or eliminate the time we provided for IXCs to prepare their networks and to educate their customers, in creating a two-step transition in our *Order on Reconsideration*. We find, however, that the technical and economic burden on these LECs that would be imposed by a denial of the extensions outweighs the burden to the IXCs and their customers. Each petitioner asserts that, even if it were technically feasible, it would suffer undue economic burden in attempting to meet the January 1, 1998 conversion deadline. Further, the economic burdens imposed by a denial of the extensions would be borne by the LECs' customers. We note, moreover, that only IXCs that have been issued a four-digit CIC (who cannot currently receive CAC calls originating with the LECs' customers) will be affected by the grant of the waivers. The petitioners' networks can, and will continue to, accept CAC calling for IXCs with three-digit CICs until the transition ends on June 30, 1998. Although we recognize the potential anticompetitive effects of the dialing disparity and seek to minimize them, we believe that those effects are outweighed by the economic and technical burdens likely to be imposed on the LECs by a failure to extend the conversion deadline for them. Thus, on balance, we find that the impact of an extension of the conversion deadline on the IXCs served by Hardy, Pierce, Northeast, Pioneer, and Hartman, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed by a denial of the extension requests.

20. We find that the conversion extension dates requested by Hardy and Pierce are reasonable. Hardy's and Pierce's requests for extensions until April 30, 1998, and May 1, 1998, respectively, allow for at least a brief period of time during which the IXCs served by these LEC switches can coordinate the conversion with them and can educate their customers about the necessary dialing changes.

21. We also find the amount of additional time requested by Northeast and Pioneer, until June 30, 1998, to be reasonable. On June 30, the permissive dialing period will end. We recognize that granting the extension until June 30, 1998, will effectively eliminate the benefits of the two-step transition created by the Commission in the *CICs Order on Reconsideration* for the IXCs served by these LECs' limited number of access lines. As noted above, we conclude, however, that the burden on the LECs that would be imposed by a denial of the extension outweighs the burden to IXCs and their customers. We reject Northeast's interpretation of the Commission's actions as requiring conversion by a LEC only if it is providing equal access in response to a request. The *CICs Order on Reconsideration*, in requiring that LECs providing equal access convert to four-digit CIC capability by January 1, 1998, does not distinguish between those LECs providing equal access voluntarily and those providing it in response to a request. This is consistent with the Commission's requirement in the *Independent Telephone Company Equal Access Report and Order*,[69] issued over twelve years ago, that companies not receiving a request for equal access implement equal access as soon as practicable.[70]

22. We also find that Hartman's request for an extension until July 1, 1998, is generally reasonable. Because the permissive dialing period ends on June 30, 1998, we grant Hartman's request until that date, rather than until July 1, 1998, to avoid disruption to IXCs and to the public when the permissive dialing period ends on June 30, 1998.

23. *Requests for Extension of Clarks, Eustis/Home, and Henderson.* We find that Clarks', Eustis/Home's, and Henderson's requested extensions, until January 1, 2000, are unreasonable. While we find that these LECs warrant an extension of the conversion deadline, we find that these LECs have failed to demonstrate the reasonableness of the amount of time they request, and to explain why, after seven months, a decision as to whether to replace their switches as a means of becoming four-digit CIC compliant has not been reached. As explained below, we grant extensions of the conversion deadline to Clarks, Eustis/Home, and Henderson, but only until June 30, 1998, which should be sufficient time for them to upgrade their switches.

24. Clarks, Eustis/Home, and Henderson all argue that switch replacement may be necessary before their networks are four-digit CIC compliant. Both Clarks and Eustis/Home assert that if switch replacement is necessary, they would not be ready to convert for 18–20 months. Henderson, while asserting that it could expect mid-1998 implementation of a switch upgrade, asserts that implementation could take several more months if it decides to purchase new equipment from a different manufacturer. We

[68] Pioneer states that currently 65 of its existing exchanges, serving approximately 86 percent of its access lines, are capable of providing the four-digit CIC function by the January 1, 1998 deadline. *See Pioneer Petition* at 3.

[69] *See* In the Matter of MTS and WATS Market Structure Phase III, *Report and Order*, CC Docket No. 78–72, 100 F.C.C.2d 860 (1985)(*Independent Telephone Company Equal Access Order*).

[70] *See id.* at para. 48, *cited in CICs Second FNPRM* at para. 83.

recognize, based on Hardy's experience, that if Clarks, Eustis/Home, and Henderson decide to replace their switches, which would involve the RUS funding approval process, the entire process could take as long as 16 months.[71] Clarks, Eustis/Home, and Henderson have not yet decided, however, whether to pursue that course of action, instead of upgrading existing ones, as a means of becoming four-digit CIC compliant. None of these carriers, who assertedly began considering conversion options as early as April 1997, has explained why, after seven months, a decision as to whether to replace their switches, a process which they all assert is a lengthy one, has not been reached. Hardy states that it began the RUS process for deploying a new switch in early 1997, and asks for an extension until only April 30, 1998; Clarks, Eustis/Home, and Henderson, on the other hand, began considering options at most only three months later than Hardy, yet request extensions of two years, rather than four months, as requested by Hardy.

25. Based on their petitions, we find that a more limited extension is warranted. Clarks, Eustis/Home, and Henderson warrant extensions of the conversion deadline to upgrade their switches because each has demonstrated diligence in pursuing switch upgrades, and the unavailability from manufacturers of products required to accomplish the upgrade. The impact of an extension on the IXCs served by them, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed in the absence of an extension.

26. First, Clarks, Eustis/Home, and Henderson have demonstrated that they are diligently working to upgrade their switches. Each asserts that, upon issuance of the *CICs Second Report and Order* in April 1997, it began assessing the steps necessary to meet the January 1, 1998 conversion deadline. Clarks currently is negotiating with Nortel regarding upgrade costs, for the updated operating system software necessary to accept four-digit CICs, and the equipment necessary to operate the software. Eustis/Home has been taking bids from several sources to obtain the fairest price for upgrades, and, in the past few months, has been communicating with vendors in addition to Nortel (such as Stromburg-Carlson and Mitel), regarding the purchase of software. Henderson is in the process of negotiations with Nortel regarding contract specifics for switch upgrades.

27. Second, based on their petitions, we conclude that Clarks, Eustis/Home, and Henderson have demonstrated that the product needed to accomplish the upgrade to their individual networks is not readily available from switch manufacturers, delaying their ability to meet the January 1, 1998, conversion deadline. Each petitioner asserts that Nortel has informed it that Nortel has a long waiting list for upgrades. Eustis/Home is currently on the waiting list for an updated version of the operating system software, but cannot expect to receive it before mid-1998. Henderson also estimates a mid-1998 implementation, based on the assumption that, once a contract is signed, approximately 180 days are needed for implementation.

28. Third, we conclude that the impact of an extension of the conversion deadline on the IXCs served by Clarks, Eustis/Home, and Henderson, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed absent an extension. Clarks, Eustis/Home, and Henderson are small, rural LECs serving a limited number of access lines. Clarks and Henderson each serves 1000 access lines, and Eustis/Home (which are commonly owned) combined serves 1300 access lines. Because, as discussed below, we are granting these LECs extensions only until June 30, 1998, the extensions will not affect or interfere with the end of the permissive dialing period on June 30, 1998.

29. We find that, based on the record, an extension until June 30, 1998, should provide sufficient time for Clarks, Eustis/Home, and Henderson to upgrade their existing switches. The burdens on IXCs and their customers of an extension beyond June 30, 1998, however, are much greater. An extension beyond that date will make it difficult for the IXCs served by them to educate their customers about the changes in dialing patterns and will affect the IXCs' customers' ability to reach them. The burdens imposed on IXCs and their customers of a longer extension outweigh any burdens that might be imposed on these LECs by our failure to extend the conversion deadline beyond June 30, 1998.

30. Consistent with our desire to avoid requiring parties to incur inefficient cost expenditures, if Clarks, Eustis/Home, and Henderson, decide to replace their switches, we will consider further extension requests from them, provided they demonstrate that they have continued to work diligently towards conversion. Any party seeking a further extension should be prepared to provide detailed documentation of the steps taken, since issuance of this Order, to achieve switch conversion by June 30, 1998. Because a grant of a further extension, even for the slightest amount of time, will cause disruption to callers if all equal access LEC end offices are not converted to recognize four-digit CICs once the permissive dialing period has ended, we will scrutinize closely any request for a further extension. For this reason, we expect any further extension requests to be for the shortest amount of time practicable.

31. Finally, we note that the *CICs Order on Reconsideration*, in addition to requiring four-digit CIC conversion by equal access LECs as of January 1, 1998, also requires that LECs must offer a standard intercept message beginning on or before June 30, 1998, explaining that a dialing pattern change has occurred and instructing the caller to contact its IXC for further information.[72] The Commission requires that, in developing an intercept message, LECs must consult with IXCs and reach agreement on the content of the message and on the period of time during which the message will be provided.[73] We emphasize that the LECs to whom we grant conversion extensions here must comply with the Commission's intercept message requirement.

32. *Requests for Extension of Hartington and Jefferson*. Hartington and Jefferson both state that they do not provide equal access. As noted above, in the *CICs Order on Reconsideration*, the Commission modified the decision in the *CICs Second Report and Order* regarding the length of the transition during which three and four-digit Feature Group D CICs co-exist, and created a ''two-step'' end to the transition to four-digit CICs, with January 1, 1998, the end of the first phase, being the deadline for LECs providing equal access to complete switch changes to recognize four-digit CICs.

33. In the *CICs Second FNPRM*, issued concurrently with the *CICs Order on Reconsideration*, the Commission, noting that some independent incumbent LECs in rural and isolated areas do not provide equal access, stated that a requirement that all LEC end office switches be upgraded to accept four-digit CICs by January 1, 1998, may have the unintended effect of requiring

[71] If Hardy began this process on January 1, 1997, and is ready for implementation by April 30, 1998, the total amount of time required would be 16 months.

[72] *See CICs Order on Reconsideration* at para. 26.

[73] *See id.*

those LECs that have never received a bona fide request for equal access or that are not subject to a specific timetable for providing equal access nonetheless to upgrade their end offices to offer equal access by January 1, 1998.[74] The Commission noted that such a requirement would modify the Commission's equal access implementation schedule for non-GTE independent telephone companies, set by the 1985 *Independent Telephone Company Equal Access Report and Order.* As more than twelve years have passed since adoption of the *Independent Telephone Company Equal Access Report and Order,* the Commission, in the *CICs Second FNPRM,* tentatively concluded that eventually all LEC end offices should be required to provide equal access.[75] Because the *CICs Order on Reconsideration* requires January 1, 1998 switch conversion to accommodate four-digit CICs only by those LECs providing equal access, however, and because Hartington and Jefferson are not providing equal access, we dismiss their petitions as moot.

IV. Ordering Clauses

34. *It is ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Hardy Telecommunications Inc., *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until April 30, 1998.

35. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Pierce Telephone Company, Inc., *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until May 1, 1998.

36. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Northeast Nebraska Telephone Company *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998.

37. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Pioneer Telephone Cooperative, Inc., *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998.

38. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Hartman Telephone Exchanges, Inc., *is granted in part,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Hartman requests extension beyond that date.

39. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Clarks Telecommunications Co. *is granted in part,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Clarks requests extensions beyond that date.

40. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Joint Petition for Limited Waiver of Eustis Telephone Exchange, Inc. and Home Telephone Company of Nebraska, *is granted in part,* by extending for them the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Eustis and Home request extension beyond that date.

41. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Henderson Telephone Company *is granted in part,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Henderson requests extension beyond that date.

42. *It is further ordered,* pursuant to authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Hartington Telecommunications Co., Inc., *is dismissed as moot.*

43. *It is further ordered,* pursuant to authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Jefferson Telephone Company *is dismissed as moot.*

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–32177 Filed 12–4–97; 4:03 pm]

BILLING CODE 6712–01–P

[74] *See CICs Second FNPRM* at para. 84.

[75] Specifically, the *CICs Second FNPRM* tentatively concluded that (1) LECs with stored program-controlled (SPC) switches that have not received a bona fide request for equal access should be required to upgrade their facilities to provide equal access and to accept four-digit CICs within three years of the effective date of an *Order* adopted in this proceeding; and (2) LECs whose end offices are equipped with non-SPC switches should be required to provide equal access and to convert their switches to accept four-digit CICs when they next replace their switching facilities. *See CICs Second FNPRM* at para. 84.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 900124–0127; I.D. 112897E]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Minimum Clam Size for 1998

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams is suspended for the 1998 fishing year. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the vast majority of surf clams harvested are larger than the minimum size limit.

DATES: January 1, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) allows the Regional Administrator, Northeast Region, NMFS, to suspend annually by publication of an announcement in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action

may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density-dependent factors.

At its August 1997 meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Scientific and Statistical Committee and Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit for surf clams in 1998. Commercial surf clam shell length data for 1997 indicate that only 15.25 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this announcement to suspend the minimum size limit for Atlantic surf clams for the period January 1, 1998, through December 31, 1998.

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 3, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32195 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970613138–7138–01; I.D. 120297A]

Scallop Fishery Off Alaska, Scallops in the Northeast District of Registration Area K

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; Inseason adjustment; request for comments.

SUMMARY: NMFS is closing the fishery for scallops in the Northeast District of Registration Area K to prevent overfishing for scallops in this District. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 3, 1997, until 2400 hrs, A.l.t., June 30, 1998. Comments must be received at the following address no later than 4:30 p.m., A.l.t., December 18, 1997.

ADDRESSES: Comments may be sent to Susan Salveson, Chief, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery off Alaska in the exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart F of 50 CFR part 600 and 50 CFR part 679.

The 1997 total allowable catch for scallops in Registration Area K, which includes the Northeast District, was established by the 1997–98 Harvest Specifications (62 FR 34182, June 25, 1997) as 400,000 pounds (181.4 metric tons (mt)) of shucked scallop meat. As of November 17, 1997, 96,000 pounds (43.54 mt) of shucked scallop meat have been caught in the Northeast District.

The Alaska Department of Fish and Game, Commercial Fisheries Management and Development Division, has monitored the scallop fishery in the Northeast District since the fishery opened on August 11, 1997. Harvest rates peaked in early September and have declined steadily. The Alaska Department of Fish and Game is concerned for the localized depletion of the scallop stocks in the Northeast District.

The Administrator, Alaska Region, NMFS, has determined, in accordance with §§ 679.63(a), 679.25(a)(1)(i), and 679.25(a)(2)(i)(A), that on the basis of the best available scientific information, the closure of the scallop season within the Northeast District of Area Registration K is necessary to prevent overfishing of this stock of scallops. Therefore, NMFS is prohibiting the taking and retention of scallops in the Federal waters of the Northeast District of Registration Area K.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent localized overfishing for scallops in the Northeast District of Registration Area K. Accordingly, under 5 U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.63 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 3, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32072 Filed 12–3–97; 2:52 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 97–052N]

Retained Water in Poultry Products; Protocols for Obtaining Data on Meat and Poultry Chilling Processes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is notifying the public of its interest in receiving and reviewing protocols for obtaining data on chilled, ready-to-cook poultry products and simultaneously requesting comments on the principles which it has tentatively identified to guide its review of those protocols. The data may be used: to benchmark the effectiveness of washing, chilling, and draining operations in minimizing pathogen growth and moisture retention in poultry products; and to develop proposed new regulations limiting retained moisture in poultry products. FSIS views the data collection as a necessary step in strengthening the basis for its regulations in the wake of a recent Federal District Court decision setting aside as ''arbitrary and capricious'' the regulatory limits on moisture absorption and retention in ready-to-cook whole chickens and turkeys. FSIS and the poultry industry have relied on these limits for many years to gauge the effectiveness of chilling processes in meeting the regulatory objective of minimizing moisture retention in poultry products. Any new regulatory limits on moisture retention must be based on sound data. The Agency is willing to review protocols developed according to the specifications published in this document or alternative protocols that may be suggested by commenters.

In view of a recent petition from a meat and poultry industry association, FSIS is also willing to review similar protocols for obtaining data on processes for the chilling of raw meat carcasses and parts.

DATES: Comments on the protocol specifications discussed in this document should be received on or before January 8, 1998.

ADDRESSES: Please send an original and two copies of comments to FSIS Docket Clerk, DOCKET #97–052, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia F. Stolfa, Assistant Deputy Administrator for Regulations and Inspection Methods Development, FSIS, Room 402 Annex Building, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION: FSIS carries out the mandates of the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) to ensure that meat, meat food, and poultry products prepared for interstate and foreign commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. The Agency maintains continuous inspection oversight of operations in meat and poultry slaughtering and processing establishments. Among the requirements enforced by the Agency are those having to do with the post-evisceration handling and storage of carcasses and parts.

Dressed carcasses typically move through washes and sprays to remove slaughter debris and foreign matter before being conveyed to chilled, refrigerated, or frozen. FSIS regulations governing the chilling of livestock and poultry carcasses reflect accepted commercial practices. Prior to shipment, livestock carcasses have traditionally been air-chilled and shipped in refrigerated trucks or railroad cars; they are commonly divided into primal and subprimal parts at the slaughtering establishment, cut-up, or boned-out and boxed before being shipped frozen or refrigerated. Prior to shipment, livestock carcasses are usually held in large cooling rooms and may be subject to spraying or ''misting'' processes intended to prevent them from shrinking. It is technologically feasible and commercially practical to air-chill livestock carcasses, combining this process with a spray system in a manner that, on average, does not result in an increase in the carcass weight. The regulations affecting chilled livestock carcasses and parts concern the sanitation conditions of storage or transport.

Poultry carcasses have traditionally been immersion-chilled and are shipped as chill-packed, ice-packed, or frozen. The poultry chilling regulations require that carcasses be chilled to 40 °F or less within a specified time after slaughter and limit the amount of retained water in product.

Poultry carcasses are chilled in immersion chilling tanks filled with water or water and ice to remove animal heat and inhibit microbial growth. Modern chillers are equipped with refrigeration units and systems for controlling water flow volume, direction, and agitation. They are efficient and effective, but inevitably, immersion-chilled poultry carcasses absorb water, mostly under the skin. The absorption of water during chilling has been considered acceptable in good commercial practice since the 1940's as a trade-off to gain the food-safety benefits of rapid chilling. The immersion chilling of poultry was considered good commercial practice in 1957, when Congress enacted the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (PPIA).

The Department promulgated regulations limiting moisture absorption in poultry in 1959, 1961, and 1970 (December 1, 1959, 24 FR 9566; July 19, 1961, 26 FR 6471; October 7, 1970, 35 FR 739). The regulations, covering the various kinds and weight classes of frozen, ice-packed, and chilled poultry, allow processors flexibility in adjusting their chilling systems as long as the maximum water absorption limits are not exceeded. Each processor establishes procedures to comply with the chilling and water absorption control requirements. Inspectors sample carcasses each day from each chilling system before washing and after chilling, and with limited draining time to determine if the poultry is in compliance with the absorbed moisture limits. If the moisture limits are exceeded, the poultry is retained until enough moisture has drained to allow the birds to be in compliance.

As a practical matter, establishments must keep their overall moisture absorption averages below the maximum limitations to meet the water absorption limits on a day-to-day basis.

The average percentage below the limits varies from establishment to establishment, depending on the individual operation. Most poultry establishments consistently comply with the water control requirements.

The moisture retention limits and other differences between the meat and poultry inspection regulations have become a focus of attention. Early in 1996, for example, FSIS received a petition from several national livestock industry associations concerning perceived inequities between the meat and poultry regulations. Among other issues, the petitioners questioned the difference between water absorption allowances for meat and for poultry.

FSIS has studied the regulations to determine where the regulatory treatment of different species can be made the same. In 1992, FSIS commissioned the Research Triangle Institute (RTI) to compare the two sets of regulations. In June 1993, RTI issued a comprehensive report, which attributed the differences on water absorption to ''traditional industry practice.''[1] FSIS has also adopted a regulatory reform plan that will lead to a consolidated set of regulations that apply to all inspected species. The Agency's ''Pathogen Reduction; Hazard Analysis and Critical Control Points Systems'' (PR/HACCP) final rule (61 FR 38806; July 25, 1996) and the recent proposed rulemaking on sanitation (62 FR 45046; August 25, 1997) are examples of initiatives in this plan.

In 1994, a group of poultry consumers and red meat producers brought an action against the Department in a Federal District Court challenging several differences in the regulatory requirements for meat and poultry, including the regulations which allow the absorption and retention of water in chilled poultry.

Plaintiffs in *Kenney et al.* v. *Glickman* alleged that poultry products containing absorbed water were both economically adulterated and misbranded within the meaning of the PPIA. They also alleged that the regulations violated the Administrative Procedure Act because they were arbitrary and capricious when compared to the regulatory prohibition on absorbed water in meat carcasses. The Court found that poultry containing absorbed water was not economically adulterated or misbranded under the PPIA. However, the Court also found that the regulation specifying moisture absorption and retention limits for ready-to-cook poultry that is to be frozen, cooked, or consumer-packaged as whole poultry (9 CFR 381.66(d)(2)) was arbitrary and capricious because the rulemaking record failed to adequately explain how the particular water retention levels were set and why meat and poultry should be treated differently.

Need for Current Data on Chilling and Moisture Retention

The Court left in place the general requirement at 9 CFR 381.66(d)(1) for establishments to minimize moisture absorption and retention in poultry at the time of packaging. The Court also left standing the regulations at 9 CFR 381.66 (d)(3)–(d)(6) controlling the amount of retained moisture in chickens and turkeys that are to be cut up or ice-packed. But the Court's decision left FSIS with no regulatory maximum limit for retained moisture in chilled or frozen whole poultry carcasses.

FSIS believes it is necessary to clarify what percentages, if any, are permissible in raw meat and poultry, and under what circumstances. Otherwise, the controversy that was brought to a head in the *Kenney* case will remain unresolved—a situation the Agency considers unsatisfactory. FSIS needs better quantitative information before considering whether to amend the current requirements limiting moisture retention in poultry products, and particularly in ready-to-cook whole birds. For example, FSIS needs baseline data reflecting the performance capabilities of technology now in use in inspected establishments. The data should be collected under acceptable protocols in accordance with the specifications described below.

On October 2, 1997, the American Meat Institute, a trade association representing meat and poultry slaughtering and processing establishments, petitioned the Department to allow incidental levels of moisture in meat and poultry as part of chilling practices that improve food safety. In view of this petition, FSIS also is willing to consider data on processes for the chilling of meat carcasses and parts. The data should be collected under acceptable protocols in accordance with the specifications described below, as applicable in meat establishments.

Protocol for Gathering Moisture Retention Data

A protocol should state a purpose. The Agency would prefer that the purpose be to determine the amount or percentage of moisture absorption and retention that is inevitable using a particular chilling system while achieving the regulatory pathogen reduction performance standard for *Salmonella* (for chickens) as set forth in the PR/HACCP final rule and the time/temperature requirements set forth in 9 CFR 381.66.

The protocol should state the type of washing and chilling system used by the establishment. For poultry establishments, the main chiller types, identified by the mechanism used to transport the birds through the chiller or to agitate the water in the chiller, are the drag-through, the screw type, and the rocker-arm type.

The protocol should also describe the configuration of the chiller system components, modifications of the components, and steps in the chilling process. The description should include the number of chillers in a series and arrangements of chilling system components, and the number of evisceration lines feeding into a chiller system. If there is a pre-chilling step in the process, its purpose and the type of equipment used should be accurately described. Any mechanical or design changes made to the chilling equipment should be described.

All special features in the chilling process, such as antimicrobial treatments, should be described. Also, the length and velocity of the dripping line should be described, as well as the time allowed for dripping. Any special apparatus, such as a mechanism for squeezing excessive moisture from chilled birds, should be explained.

Next, the protocol should contain a description of variable factors in the chilling system that affect water absorption and retention. Such factors are typically considered to be the time in chiller water, the water temperature, and agitation. The protocol should consider air agitation, where applicable.

Additional factors that may affect water-absorption and retention are scalding temperature and the pressure or amount of buffeting applied to birds by feather removal machinery, and the resultant loosening of the skin. Another factor that should be considered is the method used to open the bird for evisceration. Commenters may suggest additional factors that should be considered.

The protocol should also state the standards to be met by the chilling system. For example, the chilling system may be designed simply to achieve a reduction in temperature of ready-to-cook poultry to less than 40 °F. within the time limit specified by the regulations, or in less time. As to the standard for pathogen minimization, the *Salmonella* pathogen reduction

[1] From the ''Summary Report'' in RTI Report: *Comparison of USDA Meat and Poultry Regulations. Title 9 CFR: Subchapter A, Subchapter C,* June 1993.

standards, as set forth in the PR/HACCP final rule, have been suggested. Although there is not yet an applicable *Salmonella* standard for turkeys, commenters are free to suggest a practicable standard for use in gathering data on turkeys under the protocols here suggested. Commenters are also free to suggest the use of other microbiological targets, such as a standard for reduction in generic *E. coli* counts or reductions in numbers of other microorganisms.

Finally, the protocol should describe the testing methods to be employed both for measuring water absorption and retention and for sampling and testing product for pathogen reductions. With respect to the latter, FSIS recommends the methods to be used for *E. coli* and *Salmonella* testing under the PR/HACCP final rule. The number of samples, the type of samples, the sampling time period and the type of testing or measurement should be included in the protocol. There also should be a provision for reporting data obtained, summarizing the results and drawing conclusions.

FSIS requests that interested parties submit their comments on the foregoing protocol specifications at their earliest opportunity, and preferably by the date indicated in the **DATES** section of this document. Should FSIS decide to issue a notice of proposed rulemaking on retained moisture, sound, readily available data will be needed during the comment period to avoid a protracted rulemaking.

Done at Washington, DC: December 3, 1997.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

[FR Doc. 97–32193 Filed 12–8–97; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0992]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses increased rates for credit card accounts triggered by events such as late payments or exceeding credit limits. It provides guidance on ''same-as-cash'' transactions in open-end plans. It also addresses how creditors may determine whether credit is an open-end plan or a closed-end transaction. In addition, the proposed update discusses issues such as the treatment of annuity costs in reverse mortgage transactions and transaction fees imposed on checking accounts with overdraft protection.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should refer to Docket No. R–0992, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane E. Ahrens, Senior Attorney, or Obrea O. Poindexter, Staff Attorney; for Subparts A, C, and E (closed-end credit and reverse mortgages), Ms. Ahrens or James A. Michaels, Senior Attorney, or Michael E. Hentrel, Staff Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1998; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 1998, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

Comment 2(a)(2)–1 is revised to address communications to consumers about existing accounts. In response to requests for guidance, the proposed comment provides examples of communications that are and are not advertisements.

2(a)(18) Downpayment

Proposed comment 2(a)(18)–3 gives guidance on how a creditor discloses the downpayment in a credit sale if a trade-in is involved and if the amount of the existing lien on the trade-in exceeds its value. The comment clarifies that creditors should disclose zero and not a negative amount.

2(a)(20) Open-end Credit

The Board has been asked by Attorneys General of several states to provide additional guidance concerning how to determine whether credit is an open-end plan or a closed-end transaction. The Attorneys General are concerned that some retailers selling big-ticket items have established questionable ''revolving charge accounts'' to finance the purchase of such items, resulting in consumers making major purchases without adequate information about the true cost of the transactions. Proposed comment 2(a)(20)–3 includes factors that creditors, particularly those engaged in credit sales, should consider in determining the difference between an open-end plan and a closed-end transaction. Proposed comment 2(a)(20)–5 clarifies when a line of credit is not self-replenishing.

2(a)(24) Residential Mortgage Transaction

Comment 2(a)(24)–5 is revised for clarity. No substantive change is intended.

Proposed comment 2(a)(24)–7 clarifies that the definition of a residential mortgage transaction includes a loan for financing the construction of a primary dwelling on land already owned by the consumer.

Section 226.4—Finance Charge

4(a) Definition

4(a)(2) Special Rule: Closing Agent Charges

Comment 4(a)(2)–2 is revised to address charges to conduct a closing for a real estate-secured transaction. Creditors may exclude from the finance charge a lump-sum settlement or closing fee that includes a charge for conducting or attending a closing if the lump-sum fee is primarily for services listed in § 226.4(c)(7), even if the lump-sum fee includes incidental costs for services that are otherwise considered finance charges. The comment clarifies that charges for conducting or attending the closing are finance charges and may not be excluded from the finance charge unless the charge is incidental to the lump-sum fee.

4(b) Examples of Finance Charges

Paragraph 4(b)(2)

Comment 4(b)(2)–1 is revised to clarify that a service charge on a checking or other transaction account with a credit feature is a finance charge only if the charge on the account exceeds the charge for a similar account without a credit feature.

4(d) Insurance

Comment 4(d)–11 is revised for clarification. Under § 226.4(d), amounts paid for insurance or debt cancellation coverage may be excluded from the finance charge if the creditor discloses the fee or premium for the initial term of coverage, among other conditions. Comment 4(d)–11 contains examples of what constitutes the initial term of coverage, and also gives creditors, in certain circumstances, the option of providing the cost disclosure for one year of coverage if it is clearly labeled as such.

The proposed revision clarifies that the initial term of coverage is based on the period that the insurer or creditor is initially obligated to provide. It also clarifies that the fact that a consumer is permitted to cancel the coverage at any time does not signify that creditor may treat the initial term of coverage for purposes of this regulation as the period covered by the consumer's first payment. Where the fee or premium for the coverage is assessed periodically and the consumer is under no obligation to continue making the payments, creditors have the option of providing disclosures on the basis of one year of coverage. Creditors also have this option if the initial term of the insurance is not clear.

Subpart B—Open-end Credit

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Proposed comment 5a(b)(1)–7 clarifies that if the APR will increase upon a stated event (such as the consumer's making a late payment or exceeding the credit limit), the card issuer must disclose the increased rate, along with the condition for increasing the rate. Providing only a general description of the condition, such as stating that the rate will increase if the consumer ''fails to remain in good standing,'' is not an adequate description.

5a(b)(9) Late-Payment Fee

Proposed comment 5a(b)(9)–2 addresses cross references to the APR disclosure required under § 226.5a(b)(1), where the APR will increase due to a late payment.

5a(b)(10) Over-the-Limit Fee

Proposed comment 5a(b)(10)–2 addresses cross references to the APR disclosure required under § 226.5a(b)(1), where the APR will increase if the credit limit is exceeded.

Section 226.6—Initial Disclosure Statement

6(a) Finance Charge

6(a)(2) Annual Percentage Rate

Proposed comment 6(a)(2)-11 clarifies that if the APR will increase upon a stated event (such as the consumer's making a late payment or exceeding the credit limit), the card issuer must include the increased rate in the disclosures required under § 226.6(a)(2), along with the condition that will trigger the increase.

Section 226.7—Periodic Statement

Some creditors offer open-end plans with a deferred payment feature that allows consumers to avoid finance charges if the purchase balance is paid by a certain date. An example of these ''same as cash'' features would permit a consumer purchasing a $500 item in January to avoid any finance charge on the purchase if the $500 balance is paid by March 31. Proposed comment 7–3 gives guidance on same-as-cash transactions. To ease compliance, three cross-references to the proposed comment are added to provisions of § 226.7 addressing balances to which periodic rates are applied, the amount of the finance charge, and free-ride periods. Comment is requested on whether to add a similar cross-reference under § 226.5(b)(2), which addresses the timing of periodic statements for open-end plans offering free-ride periods.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

Revisions to two comments are proposed. Comment 14(c)–5 addresses the calculation of the APRs for multifeatured plans that charge transaction fees in addition to periodic rates. In response to requests for guidance, the comment clarifies that creditors may separately consider each feature in calculating the denominator.

Multifeatured plans are defined to include plans with features such as purchases, cash advances, or overdraft checking, or plans with groups of transactions with different pricing structures. (See comment 7–1). Creditors may disclose APRs separately for each feature or may state a composite APR for the whole plan. Some creditors offer cash advances with fees that vary if the cash advance is obtained by check, at a proprietary ATM, or at a foreign financial institution. They treat each fee structure as a ''feature.'' Appendix F gives instructions for calculating the APR when the finance charge includes interest and transaction fees. Appendix F requires creditors to include in the denominator: (1) the balance subject to a transaction fee, plus (2) the balance subject to periodic rates, less the amount of the balance subject to a transaction charge. The appendix is silent on calculating the denominator when separate features are involved.

Comment 14(c)–5 clarifies that separate features may be considered in calculating the denominator. The proposal does not attempt to define ''feature'' for purposes of the APR calculation. Comment is requested on how to retain flexibility for creditors in defining features of an open-end plan while guarding against distinctions among account services that artificially lower the APR on a consumer's periodic statement. An example of distinctions that serve to lower the APR is the situation where the creditor treats as individual features each possible

method of obtaining a cash advance, even though there are no real differences in pricing or operational characteristics. Comment is also requested on whether a creditor should separately disclose the balances related to each feature under § 226.7(e), if features are treated separately for purposes of calculating the denominator in the APR computation.

Comment 14(c)–10 addresses the treatment of fees imposed on transactions that occur late in a billing cycle and are impracticable to post until the following billing cycle. The comment would be revised to provide broader guidance for calculating the APR when finance charges posted in the billing cycle include charges relating to activity in prior cycles, such as adjustments relating to error resolution. It is intended to provide uniformity and simplify compliance for the variety of circumstances under which adjustments may occur. For instances in which adjustments from prior cycles would produce a negative APR in the current cycle, the comment incorporates the calculation rule from § 226.14(c)(3)—the APR should never be less than the APR corresponding to the periodic rate imposed on the account.

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

Proposed comment 18(g)–4 clarifies the requirements for disclosing the timing of payments. It explains that creditors must include the calendar date when the beginning payment is due and clarifies that reference to the occurrence of a particular event, for example, disclosing that the first payment is due ''30 days after the completion of construction,'' is not sufficient. If a precise date is unknown, the creditor must estimate a date and label the disclosure as an estimate.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.33—Requirements for Reverse Mortgages

33(c) Projected Total Cost of Credit

33(c)(1) Costs to Consumer

Under § 226.33, the disclosed cost of a reverse mortgage transaction must contain all costs and charges paid by the consumer, including the cost of any annuity, whether the annuity purchase is mandatory or voluntary or whether it is made through the creditor or a third party. In implementing this rule, the Board stated its belief that the Congress intended a broad application of the terms ''costs and charges.'' (60 FR 15468, March 24, 1995.) Proposed comment 33(c)(1)–2 provides further guidance for determining when an annuity is purchased as part of a reverse mortgage transaction.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0992, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction,* the following amendments would be made:

a. Under *Paragraph 2(a)(2) Advertisement.,* paragraph 1. would be revised;

b. Under *Paragraph 2(a)(18) Downpayment.,* a new paragraph 3. would be added;

c. Under *Paragraph 2(a)(20) Open-end credit.,* paragraphs 3. and 5. would be revised; and

d. Under *Paragraph (2)(a)(24) Residential mortgage transaction.,* paragraph 5. would be revised and a new paragraph 7. would be added.

The additions and revisions would read as follows:

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Supplement I—Official Staff Interpretations

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Subpart A—General

* * * * *

§ 226.2 Definitions and Rules of Construction.

2(a) Definitions.

2(a)(2) Advertisement.

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers that availability of credit transactions, whether in visual, oral, or print media, are covered by the regulation.

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. Direct mail literature or other printed material on any exterior or interior sign.

D. Point-of-sale displays.

E. Telephone solicitations.

F. Price tags that contain credit information.

G. Letters sent to customers as part of an organized solicitation of business.

H. Messages on checking account statements offering auto loans at a stated annual percentage rate.

I. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does *not* include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest rate and loan term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market research or educational materials that do not solicit business.

►F. Communications about an existing account (for example, a promotion in connection with an existing credit card account).◄

* * * * *

2(a)(18) Downpayment.

* * * * *

►3. *Effect of existing liens.* In a credit sale, the ''downpayment'' may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value

of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not -$2,000.◄

* * * * *

2(a)(20) Open-end credit.

* * * * *

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with the consumer under the credit plan as a whole and need not believe the consumer will reuse a particular feature of the plan.

►i. *Factors.* Each credit plan may differ, and no one factor will determine whether a creditor reasonably contemplates repeated transactions. Some of the factors to be considered in determining whether a creditor could reasonably contemplate repeated transactions are:

A. Whether the line of credit is limited to the purchase of a certain product if it is a product that consumers would not likely purchase in multiples. The greater the variety of products available for purchase under the credit line, the more likely it is that the creditor reasonably contemplates repeated transactions. Some creditors may not offer a variety of products for purchase, but given the nature of the creditor's products or services, it is nonetheless likely that consumers will make repeated purchases—as in the case of gasoline companies that issue credit cards.

B. Whether the creditor establishes a line of credit for the purpose of enabling the consumer to purchase a designated item. It is more likely that a creditor reasonably contemplates repeated transactions if a consumer may use the credit to purchase any one of a number of items. For example, if a retailer of pianos establishes a line of credit for the purpose of the consumer purchasing a piano, it is unlikely that the creditor can reasonably contemplate repeated transactions.

C. If the creditor establishes a line of credit to finance the consumer's purchase of a designated item, the amount of the transaction relative to the credit made available to the consumer. The larger the amount of the transaction, the less likely it is that the creditor reasonably contemplates repeated transactions. For example, if a retailer of satellite dishes makes credit of $5,000 available to a consumer for the purchase of a satellite dish, and the cost of the satellite dish is $4,500, it is not likely the creditor contemplates repeated transactions. The fact that the retailer sells other products that are nominal in amount (compared with the cost of the major purchase) is not a sufficient basis to contemplate repeated transactions.

D. The extent to which a creditor reasonably solicits customers with its line of credit to make additional purchases under the credit line. For example, if a home improvement contractor issues a private label credit card with a $10,000 limit to a consumer paying for roof repairs in the amount of $9,000, and sends monthly solicitations for aluminum siding, the creditor does not reasonably contemplate repeated transactions.

E. Whether the creditor has information on consumers with the credit line showing that consumers have made repeat purchases. The more information that shows that consumers have made repeat purchases, the more likely it is that the creditor reasonably contemplates repeated transactions.

ii. *Standard.*◄ A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that a particular consumer does not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with the consumer. For example:

A. It would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions with a member than for a seller of aluminum siding to make the same assumption about its customers.

B. It would be more reasonable for a bank to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.

* * * * *

5. *Reusable line.* i. The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. ►However, a line of credit generally is not self-replenishing where the initial line of credit is less than, or not much more than, the amount of an item purchased to open the credit line or, based on the minimum monthly payments, the principal reduction is so nominal that the credit line is not reusable for an extended period of time.◄ The creditor may verify credit information such as the consumer's continued income and employment status or information for security purposes. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment.

ii. For example:

A. Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt.

iii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the economy, the creditor's financial condition, or the consumer's creditworthiness. (The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any present credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

* * * * *

2(a)(24) Residential mortgage transaction.

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5. *Acquisition.* ►i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some title to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under § 226.18(q) or § 226.19(a) (assumability policies and early disclosures for residential mortgage transactions). However, the rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage allowing the buyer to assume the mortgage where the buyer previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages). ◄ [A transaction is not ''to finance the acquisition'' of the consumer's principal dwelling (and therefore is not a residential mortgage transaction) if the consumer had previously purchased the dwelling and acquired some title to the dwelling, even though the consumer has not acquired full legal title. Thus, the following types of transactions are not a residential mortgage transactions:

- The financing of a balloon payment due under a land sale contract.
- An extension of credit made to a joint owner of property to buy out the other joint owner's interest.

As a result, in giving the disclosures for these transactions several provisions of the regulations are not applicable, for example, the exceptions to the right of rescission (§§ 226.23(f)(1) and 226.15(f)(1), the early disclosure requirement (§ 226.19(a)), and the disclosure concerning assumability (§ 226.18(q)). In the following situation, by contrast, since the transaction is not a residential mortgage transaction, no disclosures are required by § 226.20(b) and therefore the right of rescission does not apply:

• A written agreement between a creditor holding a seller's mortgage and the buyer of the property which allows the buyer to assume the mortgage, where the buyer previously purchased the property and agreed with the seller to make the mortgage payments.

* * * * *

►7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.◄

* * * * *

3. In Supplement I to Part 226, under *Section 226.4—Finance Charge*, the following amendments would be made:

a. Under *Paragraph 4(a)(2).*, paragraph 2. would be revised;

b. Under *Paragraph 4(b)(2).*, paragraph 1. would be revised; and

c. Under *Paragraph 4(d) Insurance and debt cancellation coverage.*, paragraph 11. would be revised; paragraph 12. would be redesignated as paragraph 13.; and a new paragraph 12. would be added.

The revisions and additions would read as follows:

* * * * *

226.4 Finance Charge.

4(a) Definition.

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4(a)(2) Special rule: closing agent charges.

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2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a)[;]►. A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and incidental to◄ a lump-sum fee for real estate closing costs [may be] excluded under § 226.4(c)(7).

* * * * *

4(b) Examples of finance charges.

* * * * *

Paragraph 4(b)(2).

1. *Checking account charges.*►A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit, while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge.

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning the item on a similar account without a credit feature; the $5 charge is not a finance charge. ◄[The checking or transaction account charges discussed in § 226.4(b)(2) include, for example, the following situations:

• An account with an overdraft line of credit incurs a $4.50 service charge, while an account without a credit feature has a $2.50 service charge; the $2.00 difference is a finance charge. If the difference is not related to account activity, however, it may be excludable as a participation fee. (See the commentary to § 226.4(c)(4).)

• A service charge of $5.00 for each item that triggers an overdraft credit line is a finance charge. However, a charge imposed uniformly for any item that overdraws a checking account, regardless of whether the items are paid or returned and whether the account has a credit feature or not, is not a finance charge.]

* * * * *

4(d) Insurance and debt cancellation coverage.

* * * * *

11. *Initial term.* i. The initial term of the insurance ►or debt cancellation◄ coverage determines the period for which a premium amount ►or fee◄ must be disclosed, ►unless the one-year option discussed under comment 4(d)-12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though monthly premiums are paid and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.◄ [In some cases the initial term is clear, for example a property insurance policy on an automobile written for one year (even though the term of the credit transaction is four years) or a credit life insurance policy for the term of the credit transaction purchased by paying or financing a single premium. In other cases, however, it may not be clear what the initial term of the insurance is, for example, when the consumer agrees to pay a premium that is assessed periodically and the consumer is under no obligation to continue making the payments. In cases such as this, the cost disclosure may be made on the basis of a premium for one year of insurance coverage. The premium must be clearly labeled as being for one year.]

►12. *Initial term; alternative.* i. A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage after making the initial payment.

ii. For example:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years even though premium payments are made monthly and the consumer is not required to continue the coverage after making the initial payment. The creditor has the option of making disclosures on the basis of coverage for one-year.◄

* * * * *

4. In Supplement I to Part 226, under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, the following amendments would be made:

a. Under *Paragraph 5a(b)(1) Annual Percentage Rate.*, a new paragraph 7. is added;

b. Under *Paragraph 5a(b)(9) Late Payment Fee.*, a new paragraph 2. is added; and

c. Under *Paragraph 5a(b)(10) Over-the-Limit Fee.*, a new paragraph 2. is added.

The additions would read as follows:

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Subpart B—Open End Credit

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§ 226.5a Credit and Charge Card Applications and Solicitations.

* * * * *

5a(b) Required Disclosures.

5a(b)(1) Annual Percentage Rate.

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►7. *Increased penalty rates.* If the initial rate will increase upon the occurrence of a specified event such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose along with the initial rate the increased penalty rate that would apply. The issuer must also disclose the specific condition or conditions for imposing the increased rate, such as ''22% APR, if 60 days late.'' The issuer may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' A creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.◄

* * * * *

5a(b)(9) Late Payment Fee.

* * * * *

►2. *Increased penalty rates.* If the annual percentage rate will increase as a result of late payments, the disclosures under § 226.5a(b)(9) must include a reference to the disclosures required under § 226.5a(b)(1).◄

5a(b)(10) Over-the-Limit Fee.

* * * * *

►2. *Increased penalty rates.* If the annual percentage rate will increase as a result of the cardholder's exceeding the credit limit, the disclosures under § 226.5a(b)(10) must

include a reference to the disclosures required under § 226.5a(b)(1).◄

* * * * *

5. In Supplement I to Part 226, *Section 226.6—Initial Disclosure Statement*, under *Paragraph 6(a)(2).*, a new paragraph 11. would be added to read as follows:

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Section 226.6—Initial Disclosure Statement

* * * * *

6(a) Finance charge.

* * * * *

Paragraph 6(a)(2).

* * * * *

►11. *Increased penalty rates.* If the annual percentage rate will increase upon the occurrence of a specified event such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose along with the initial rate the increased penalty rate that would apply. The issuer must also disclose the specific condition for imposing the increased rate, such as ''22% APR, if 60 days late.'' The issuer may disclose the period for which the increased rate will remain in effect. A creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.◄

* * * * *

6. In Supplement I to Part 226, under *Section 226.7—Periodic Statement*, the following amendments would be made:

a. Under introductory text, a new paragraph 3. would be added;

b. Under *Paragraph 7(e) Balance on which finance charge computed.*, a new paragraph 10. would be added;

c. Under *Paragraph 7(f) Amount of finance charge.*, a new paragraph 9. would be added; and

d. Under *Paragraph 7(j) Free-ride period.*, a new paragraph 2. would be added.

The additions would read as follows:

* * * * *

§ 226.7 Periodic Statement.

* * * * *

►3. *Same-as-cash transactions.* Some creditors offer a deferred payment feature for purchases in which consumers avoid finance charges if the purchase balance is paid in full by a certain date. For example, no finance charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Balances subject to periodic rates.* Under § 226.7(e), creditors must disclose the balances subject to periodic rates during a billing cycle. The deferred payment balance ($500 in this example) is not subject to a periodic rate for billing cycles between the date of purchase and the payment due date. Periodic statements sent for those billing cycles should not include the deferred payment balance in the balance disclosed under § 226.7(e). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(e).

ii. *Amount of finance charge.* Under § 226.7(f), creditors must disclose finance charges imposed during a billing cycle. For some same-as-cash purchases, the creditor may impose a finance charge from the date of purchase if the deferred payment balance ($500 in this example) is not paid in full by the due date, but will not impose finance charges for billing cycles between the date of purchase and the payment due date. Periodic statements for billing cycles preceding the payment due date should not include in the finance charge disclosed under § 226.7(f) the amounts a consumer may owe if the deferred payment balance is not paid in full by the payment due date. In this example, the February periodic statement should not identify as finance charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than ''finance charge.''

iii. *Free-ride period.* Assuming monthly billing cycles ending at month-end and a free-ride period ending on the 25th of the following month, here are two examples illustrating how a creditor may comply with the requirement to disclose the free-ride period applicable to a deferred payment balance ($500 in this example), and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment due date for the $500 purchase. (The creditor could also identify March 31 as the payment due date for any other amounts due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.◄

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7(e) Balance on which finance charge computed.

* * * * *

►10. *Same-as-cash transactions.* See comment 7–3(i).◄

7(f) Amount of finance charge.

* * * * *

►9. *Same-as-cash transactions.* See comment 7–3(ii).◄

* * * * *

7(j) *Free-ride period.*

* * * * *

►2. *Same-as-cash transactions.* See comment 7–3(iii).◄

* * * * *

7. In Supplement I to Part 226, *Section 226.14—Determination of Annual Percentage Rate*, under *Paragraph 14(c) Annual percentage rate for periodic statements.*, paragraph 5. and paragraph 10. would revised to read as follows:

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§ 226.14 Determination of Annual Percentage Rate.

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

5. *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3% of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the ''other amounts on which a finance charge was imposed'' figure. ►In a multifeatured plan, creditors may separately consider each bona fide feature in the calculation of the denominator.◄ For further explanation and examples of how to determine the components of this formula, see appendix F.

* * * * *

10. ◄*Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance that occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected in the annual percentage rate for the billing cycle in which the charges are posted. If the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. Balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, the transaction was impracticable to post in the previous cycle due to its timing, or the charge relates to an adjustment such as the resolution of a billing error dispute or an unintentional posting error. An annual percentage rate calculated under this paragraph shall not be less than the highest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.◄ [*Transactions at end of billing cycle.* The annual percentage rate reflects transactions and charges imposed during the billing cycle. However, it may be impracticable to post a transaction that occurs at the end of a billing cycle until the following cycle, such as a cash advance that occurs on the last day of a billing cycle and is posted to the account in the following cycle. A card issuer that uses the date of the

transaction to figure finance charges should calculate the annual percentage rate as follows for the billing cycle in which the transaction and charges are posted:

i. The denominator is calculated as if the transaction occurred on the first day of the billing cycle; and

ii. The numerator includes the amount of the transaction charge plus all finance charges derived from the application of the periodic rate to the amount of the transaction (including all charges from a prior cycle).]

* * * * *

8. In Supplement I to Part 226, *Section 226.18—Content of Disclosures,* under *Paragraph 18(g) Payment schedule.,* the 18(g) heading would be revised, and a new paragraph 4. would be added to read as follows:

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Subpart C—Closed End Credit

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§ 226.18 Content of Disclosures.

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[Paragraph] 18(g) Payment schedule.

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►4. *Timing of payments.* Creditors must disclose when payments are due, including the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due ''monthly beginning on July 1, 1998.'' A reference to the occurrence of a particular event, for example, disclosing that the first payment is due ''30 days after the completion of construction,'' is not sufficient. If the beginning-payment date is unknown, the creditor must use an estimated date and label the disclosure as an estimate pursuant to § 226.17(c).◄

* * * * *

9. In Supplement I to Part 226, *Section 226.33—Requirements for Reverse Mortgages,* under *Paragraph 33(c)(1) Costs to consumer,* in paragraph 2., a new sentence is added at the end of the paragraph to read as follows:

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 226.33 Requirements for Reverse Mortgages.

* * * * *

33(c) Projected total cost of credit.

Paragraph 33(c)(1) Costs to consumer.

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2. *Annuity costs.* * * * ►For example, this includes the costs of an annuity that a creditor offers, arranges, assists the consumer in purchasing, or that the creditor is aware the consumer is purchasing as a part of the transaction.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–31896 Filed 12–8–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–248–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. This proposal would require inspection of the wing leading edge sections for the correct amount of bleed air exhaust holes, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–248–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. The RLD advises that, during assembly of a Fokker Model F28 Mark 0100 series airplane, it was discovered that the number of bleed air exhaust holes in one of the wing leading edge sections was not in conformity with type design. Subsequent investigation revealed that some spare wing leading edge sections did not have any bleed air exhaust holes present.

Missing bleed air exhaust holes may cause improper bleed air circulation within the wing thermal anti-ice system. This condition, if not corrected, could result in malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–57–032, dated August 21, 1995, which describes procedures for a one-time visual inspection of the wing leading edge sections for the correct amount of bleed air exhaust holes, and rework of the wing leading edge sections to add the correct amount of holes, if necessary. The service bulletin also describes procedures for visual inspection of the adjacent structure of certain wing leading edge sections to detect heat damage, and repair, if necessary. The service bulletin references Fokker Component Service Bulletin D14000–57–004, dated August 21, 1995, as an additional sources of service information for a one-time visual inspection of the wing leading edge sections held in spares for the correct amount of bleed air exhaust holes, and rework of the wing leading edge sections to add the correct amount of holes, if necessary. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA No. 1995–087 (A), dated August 31, 1995, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Fokker Service Bulletin SBF100–57–032, dated August 21, 1995, specifies that operators are to contact the manufacturer for repair instructions if any heat damage is found. However, this proposed AD would require that the repairs be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $7,860, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 97–NM–248–AD.

Applicability: All Model F28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating, accomplish the following:

(a) Within 60 days after the effective date of this AD, inspect all wing leading edge sections for the presence of the correct number of bleed air exhaust holes, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–032, dated August 21, 1995. If any missing holes are detected, prior to further flight, accomplish paragraph (a)(1) and (a)(2) of this AD, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin:

(1) Rework the affected wing leading edge section(s) to add the correct number of holes, and

(2) Perform a visual inspection of the auxiliary spar or front spar, as applicable, to detect heat damage. If any heat damage is detected, prior to further flight, repair the affected structure in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) As of the effective date of this AD, no person shall install a wing leading edge section, unless it has been inspected for the presence of the correct number of bleed air exhaust holes, and reworked, if necessary, to add the correct number of holes, in accordance with Fokker Component Service Bulletin D14000–57–004, dated August 21, 1995.

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

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

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

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1995–087 (A), dated August 31, 1995.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32113 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–280–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require removal of certain landing gear attachment pins, and replacement of the pins with serviceable pins. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent wear of the attachment pins, which could result in collapse of the main landing gear.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–280–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series airplanes. The DGAC advises that failed main landing gear (MLG) pins have been found during routine inspections. The failure has been traced to inadequate quality control of the MLG attachment pins during manufacture. Failure of the MLG attachment pins, if not corrected, could result in collapse of the MLG.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin No. ATR72–32–1036, and No. ATR72–32–1037, both dated June 19, 1996, which describe procedures for removal of certain attachment pins of the MLG, and replacement of the pins with serviceable pins. The Aerospatiale service bulletins reference Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996, and No. 631–32–126, dated May 7, 1996, as the appropriate sources of service information for accomplishment of these actions. The DGAC classified the Aerospatiale service bulletins as mandatory and issued French airworthiness directive 96–096–029(B), dated May 9, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $42,120, or $1,080 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 97–NM–280–AD.

Applicability: Model ATR72 series airplanes; as identified in Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996, and Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wear of the landing gear attachment pins, which could result in collapse of the main landing gear (MLG), accomplish the following:

(a) Within 12 months after the effective date of this AD, remove the MLG leg hinge pins and side brace assembly center pins having the part numbers (P/N) specified in paragraph B. of the Planning Information of Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996; and replace the pins with serviceable pins, in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996.

(b) Prior to the accumulation of 15,000 landings since the last overhaul of the MLG, or within 8 years since the last overhaul of the MLG, whichever occurs first: Remove the MLG swinging lever/barrel pins and shock absorber/universal joint hinge pins having the
P/N's specified in paragraph B. of the Planning Information of Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996; and replace the pins with serviceable pins; in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–126, dated May 7, 1996.

Note 2: Serviceable pins include those that have been removed, inspected, and marked with green paint in accordance with Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996; or Messier-Dowty Service Bulletin No. 631–32–126, dated May 7, 1996; as applicable.

(c) As of the effective date of this AD, no person shall install any MLG pin having a part number identified in Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996, or Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996, on any airplane unless that pin is considered to be serviceable in accordance with the applicable service bulletin.

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

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

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

Note 4: The subject of this AD is addressed in French airworthiness directive 96–096–029(B), dated May 9, 1996.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32111 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–65–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, if necessary. This proposal is prompted by reports of inadequate clearance between the galley power feeder wiring and passenger oxygen system tubing. The actions specified by the proposed AD are intended to prevent such inadequate clearance, which could result in a fire in the ceiling area above the door 4 galley due to chafing of wiring on oxygen system tubing.

DATES: Comments must be received by January 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2670; fax (425) 227–1181.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–65–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received reports of inadequate clearance between the galley power feeder wiring and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley on a number of Model 747–400 series airplanes, including one in assembly. Inadequate clearance between wiring and oxygen tubing can result in chafing of the wiring on the tubing, and resultant electrical arcing, which could damage the oxygen tubing. If the damaged tubing is pressurized, oxygen could leak in the vicinity of the electrical arcing. This condition, if not corrected, could result in a fire in the ceiling area above the door 4 galley.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997, which describes procedures for a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, if necessary, to obtain adequate separation.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Differences Between the Alert Service Bulletin and This Proposed AD

The alert service bulletin separates affected airplanes into two groups (Groups 1 and 2), and recommends compliance within 90 days and 18 months, respectively, for those groups. In addition to providing oxygen to passengers in the event of an in-flight depressurization, the oxygen system on Group 1 airplanes also can provide therapeutic oxygen. The oxygen tubing on Group 1 airplanes is always pressurized with oxygen because of this therapeutic oxygen feature. The oxygen tubing on Group 2 airplanes is only pressurized when the passenger oxygen system is activated in the event of depressurization. Chafing of wires on pressurized oxygen tubing (i.e., Group 1 airplanes) represents a greater fire hazard; therefore, the alert service bulletin recommends earlier compliance for that group.

The manufacturer has advised the FAA that most Group 1 airplanes have already voluntarily accomplished the actions specified in the alert service bulletin, and no cases of chafing have been found. In light of this, the FAA has determined that a compliance time of 18 months for both Group 1 and Group 2 airplanes will provide an acceptable level of safety.

Cost Impact

There are approximately 452 Boeing Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed

actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,320, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–65–AD.

Applicability: Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the galley power feeder and static ground wiring on passenger oxygen system tubing in the forward ceiling area above the Door 4 galley, which could result in a fire, accomplish the following:

(a) Within 18 months after the effective date of this AD: Perform a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley, in accordance with Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997. If the separation is outside the limits specified in the alert service bulletin, prior to further flight, reroute the wiring, and install clamps and sleeves in accordance with the alert service bulletin.

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

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

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

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32110 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–75–AD]

RIN 2120–AA64

Airworthiness Directives; Grumman Model TS–2A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Grumman Model TS–2A series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Frank Hoerman, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood,

California 90712; telephone (562) 527–5371; fax (562) 625–5210.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–75–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since turbo-propeller powered Grumman Model TS–2A series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other turbo-propeller powered Grumman Model TS–2A series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

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

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $60.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Grumman: Docket 97–NM–75–AD.

Applicability: All Model TS–2A series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

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

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

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

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32109 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; SAAB Model Saab 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all SAAB Model Saab 2000 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–97–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability,

or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved airplane flight manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since SAAB Model Saab 2000 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other SAAB Model Saab 2000 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

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

Cost Impact

The FAA estimates that 3 SAAB Model Saab 2000 series airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $180, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab: Docket 97–NM–97–AD.

Applicability: All Model Saab 2000 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power lever(s) below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and subsequent loss of engine power.

It is prohibited to activate BETA OVRD in flight.''

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

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

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

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32108 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–62–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–62–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Dornier Model 328–100 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other Dornier Model 328–100 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

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

Cost Impact

The FAA estimates that 60 Dornier Model 328–100 series airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier: Docket 97–NM–62–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Power levers selection below Flight Idle (FI) gate is prohibited during flight.

WARNING: Movement of any power lever behind the flight idle (FI) gate during flight could lead to loss of airplane control from which recovery may not be possible.''

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

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

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

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32119 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–21–AD]

Airworthiness Directives; Eurocopter France Model SA 365N, N1 and AS 365N2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France (Eurocopter) Model SA–365N, N1 and AS–365N2 helicopters. This proposal would require inspections of the main gearbox suspension diagonal cross-member (diagonal cross-member) for cracks, and removal of the diagonal cross-member and replacement with an airworthy diagonal cross-member if any crack is found. This proposal is prompted by several reports of the discovery of cracks in diagonal cross-members. The actions specified by the proposed AD are intended to prevent failure of the diagonal cross-member which could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing.

DATES: Comments must be received by February 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region,

Attention: Rules Docket No. 97–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made. ''Comments to Docket No. 97–SW–21–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Model SA–365N, N1 and AS–365N2 helicopters. The DGAC advises that a crack has been discovered in a diagonal cross-member of an affected helicopter.

Eurocopter has issued Eurocopter France Telex Service No. 05.00.37, dated February 20, 1997, which specifies checks (inspections) of the diagonal cross-member, part number (P/N) 365A38–3023–20, –21, –22, –23, or –24, for cracks using a flexible borescope with a 90° angle, or a video assembly with optical fiber illumination, or any other appropriate device that makes it possible to visually inspect the center area of the component; and replacement of the diagonal cross-member before further flight if a crack is detected. Modifying the affected model helicopters in accordance with MOD 0763B80 by installing a diagonal cross-member, P/N 356A38–3062–20, constitutes a terminating action for the requirements of this AD. The DGAC classified this service telex as mandatory and issued AD 97–093–041(AB)R1, dated July 30, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Model SA–365N N1 and AS–365N2 helicopters of the same type design registered in the United States, the proposed AD would require inspections of the diagonal cross-member for cracks, and replacement with an airworthy diagonal cross-member if any crack is found.

The FAA estimates that 47 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one work hour per helicopter to inspect the diagonal cross-member and 10 work hours per helicopter to replace the diagonal cross-member, if necessary, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,950. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $498,670, assuming one inspection per helicopter, and replacement of a diagonal cross-member on each helicopter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97–SW–21–AD.

Applicability: Model SA–365N, N1 and AS–365N2 helicopter with diagonal crossmembers, part number (P/N) 365A38–3023–20, –21, –23, or –24, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired, so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main gearbox suspension diagonal cross-member (diagonal cross-member), which could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For Model SA–365N and N1 helicopters, prior to the accumulation of 50,000 operating cycles; and for Model AS–365N2 helicopters, prior to the accumulation of 30,000 operating cycles:

Note 2: The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Inspect the diagonal cross-member for cracks in the area of the center bore hole, using a borescope with a 90° angle drive, or a video assembly with optical fiber illumination, or any other appropriate device that makes it possible to visually inspect the center area of the part.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at intervals not to exceed 500 operating cycles, or 100 hours time-in-service, whichever occurs first.

(b) If any crack is found as a result of the inspections required by paragraphs (a)(1) or (a)(2) of this AD, remove the diagonal cross-member and replace it with an airworthy diagonal cross-member.

(c) Installation of modification MOD 073880 that installs a diagonal cross-member, P/N 356A38–3062–20, constitutes a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD97–093–041(AB)R1, dated July 30, 1997.

Issued in Fort Worth, Texas, on December 2, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–32117 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–228–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop.

The FAA notes that both Model ATR–42 and ATR–72 series airplanes are equipped with an electro-mechanical gate device that is designed to protect against the positioning of power levers below the flight idle stop in flight. The gate device has an override feature that allows access to beta during a landing roll, in the event of certain system failures. If a certain type of failure occurs, access to beta is available in flight. A pilot who is accustomed to protection that the electro-mechanical gate device provides may inadvertently access beta in flight. Further, a pilot may deliberately access beta in flight using the override feature.

In light of this, the FAA considers that the revision of the AFM is necessary to ensure that pilots are reminded that positioning of power levers below the flight idle stop while the airplane is in flight is prohibited, even though an electro-mechanical gate device is installed. The FAA further considers this to be a minimum action to ensure that pilots do not carry over certain flight habits from an airplane design that mitigates the effects of beta in flight to an airplane design that does not.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on Model ATR–42 and ATR–72 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Cost Impact

The FAA estimates that 144 Aerospatiale Model ATR–42 and ATR–72 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,640, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 97-NM–228-AD.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop

while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

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

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

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

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32120 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AA94

Safety Standards for the Use of Roof-Bolting Machines in Underground Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Recent accidents in underground coal mines involving roof-bolting machines indicate the need to modify the design of such machines and require additional safety features. The accident history involving use of these machines prompted the Mine Safety and Health Administration (MSHA) to evaluate roof-bolting machines currently in use, primarily focusing on potential hazards to the machine operators during the drilling and roof-bolt installation procedures. As a result of the evaluation of accidents, MSHA is in the early stages of establishing design criteria and operating procedures for roof-bolting machines in underground mines. This notice seeks to obtain additional information and data on machine design, operating procedures, and miners' experiences with roof-bolting machines.

DATES: Submit comments on or before February 9, 1998.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. Commenters are encouraged to submit comments on a computer disk or via e-mail to psilvey@msha.gov along with an original hard copy or via telefax to: 703–235–5551.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

An estimated 2,500 roof-bolting machines are currently in use at underground coal, potash, trona, and salt mines in the United States. The machines are used to install many types of roof bolts and other support materials into the mine roof.

Between January 1984 and April 1994, 16 fatal accidents occurred involving the operation and maintenance of roof-bolting machines. In a six-week period in early 1994, three operators of roof-bolting machines were killed while operating the machines in coal mines. Two were crushed between the drill head and machine frame while bolting the rib, and the other was crushed between the drill head boom and canopy when the fast-feed boom lift lever was inadvertently activated. Responding to these accidents, on April 4, 1994, MSHA formed and chaired the Roof-Bolting-Machine Committee (committee) with representatives from the U.S. Bureau of Mines and the West Virginia Office of Miners' Health, Safety, and Training, to review accident data, to visit mines to observe roof-bolting practices, and to interview miners. Additionally, the committee met with four major roof-bolting machine manufacturers, who provided data and technical information on machine design and function.

The study focused on boom and mast-type roof-bolting machines and did not include continuous mining machines with integral bolters. Primarily, the committee examined the potential hazards to the roof-bolter operators during the drilling and roof-bolt installation procedures.

Following this study, the committee issued a Report of Findings (Report) on roof bolter safety on July 8, 1994 outlining problems and potential solutions for reducing roof-bolting accidents. These findings are summarized below. Copies of the Report are available to the public at all MSHA district offices; from MSHA's Office of Standards, Regulations, and Variances, by calling 703–235–1910; and through MSHA's Home Page on the Internet, at http://www.msha.gov.

The committee was reconvened on October 21, 1996. The purpose of this meeting was to determine whether any new technology or design changes had occurred beyond those included in the committee's 1994 Report. The committee identified one design change, a new valve developed by a manufacturer to prevent its two-handed, fast-feed valve from being bypassed.

The committee also reviewed MSHA accident data for the period from April 1994 through December 1996. (The report covered January 1984 through March 25, 1994.) Although there have been numerous accidents and injuries, there have been no fatalities related to the operation of roof-bolting machines in either coal or metal and nonmetal mines since the issuance of the roof-bolter safety report. An analysis of the data confirmed that accidents directly related to the operation and maintenance of roof-bolting machines continue to occur.

II. Findings

The committee identified several roof-bolting-related problem areas which may have contributed to or caused the accidents. These included: (1) inadvertent actuation of controls, particularly the drill-head, fast-feed control lever, which contributed to approximately 50 percent of the fatal accidents; (2) work position location; (3) retrieval of drill steel; (4) resin insertion; (5) location of controls; and (6) control malfunction. In addition, the committee identified various other areas for improvement in future roof-bolting machine design.

III. General Issues

The committee developed ten possible solutions to address problems with existing roof-bolting machines. The solutions are as follows:

1. Installing two-handed, fast-feed controls that prevent actuation of drill-head feed controls while the machine operators are positioned in pinch-point areas.

2. Installing a drill-head raise shutoff. This device would be installed in the drill-head raise pinch point and would immediately stop the hydraulic oil flow to the drill-head feed cylinder, thus preventing the feed cylinder from being raised and accidentally injuring the operator.

3. Installing auxiliary controls for the canopy raise/lower and boom swing functions to eliminate the pinch point where operators have been injured by the swinging boom.

4. Installing control guarding or double-acting fast-feed controls, or both, to prevent inadvertent activation.

5. Providing visual identification of pinch-point areas to alert the operator of the danger area.

6. Installing self-centering controls to prevent continued machine movement when the control lever is released.

7. Securing the rotating drill steels or wrench to prevent the operator from becoming entangled in these moving machine components.

8. Installing insertion/retrieval devices (resin insertion tools or drill steel retrieval) to eliminate the need for the operator to extend his body into a pinch point or climb onto the boom.

9. Standardizing location of controls to prevent inadvertent actuation of controls due to different roof-bolting machine control layouts.

10. Conducting a pre-operational inspection of machine controls to detect malfunctions prior to operation.

These possible solutions are intended to address the problems with roof-bolting machines and to prevent accidents. MSHA requests miners, mine operators, manufacturers, and other interested parties to comment on the qualitative and quantitative potential benefits and costs of compliance associated with adoption of these solutions, and any alternatives to these solutions.

Although MSHA is considering development of a proposed rule to address the hazards associated with roof-bolting machines, the Agency also solicits comment from the public on alternatives, other than rulemaking, to address safety hazards on roof-bolting machines used in the mines today.

IV. Specific Issues

Because a roof-bolting machine standard would apply to both coal and metal and nonmetal mining industries, commenters should provide specific justification for their positions based on sound engineering, work practices, and mining conditions. MSHA requests comment on the technological and economical feasibility and benefits of the solutions suggested in the Report of Findings and in this notice. Specifically, MSHA seeks input on the following issues: the current availability of technology to retrofit existing machines with two-handed fast-feed controls, double-acting fast-feed controls, control guarding, visual identification markers to alert the operator of the pinch point area, self-centering controls, or insertion/retrieval devices; the impact on the design and operation of existing machines if retrofitting were to be required; the impact of available technology on newly-purchased machines; the costs to manufacturers and mine operators of available technology; and any other information that is relevant to the findings in the Report. Commenters are encouraged to provide information specific to their mining conditions.

V. Impact

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations, and propose regulations on the basis that the benefits justify the costs. Regulatory agencies also are required to base decisions on the best reasonably obtainable scientific, technical, economic, and other data and information concerning the need for and the consequences of the proposed regulations.

MSHA is in the early stages of developing a proposed rule. The Agency anticipates that the benefit of a safety standard addressing design criteria and operating procedures for the use of roof-bolting machines in underground mines would be the prevention of fatalities and injuries which occur when these machines are operated.

VI. Public Participation

MSHA requests comments on the specific issues addressed in this notice as well as those addressed in the Report of Findings. Interested parties are particularly encouraged to be as specific as possible in addressing each of MSHA's possible solutions and in suggesting alternatives to these solutions. MSHA also requests that commenters include specific examples and cost estimates to support their rationale to assist the Agency in evaluating and analyzing their comments.

List of Subjects in 30 CFR Parts 57 and 75

Mine safety and health, Underground mining.

Dated: December 3, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–32203 Filed 12–8–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AI98

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Rules of Practice of the Board of Veterans' Appeals (Board) to discontinue VA's paying attorney fees from past-due benefits, establish safeguards in the case of ''disinterested third-party'' payers, and simplify certain notice procedures. We believe that discontinuance of VA's paying attorney fees from past-due benefits is warranted because the administrative resources that it consumes would be better spent in activities more directly beneficial to veterans; the establishment of safeguards regarding ''disinterested third-party'' payers will help prevent circumvention of the law restricting payments by claimants and appellants; and simplified notice procedures relating to motions to review attorney-fee agreements or to challenge expense charges are adequate for establishing proof of service.

DATES: Comments must be received on or before February 9, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI98''. All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits.

This document proposes to amend the Board's Rules of Practice to (1) exercise the option provided in 38 U.S.C. 5904(d)(3) not to pay attorney fees directly to an attorney out of past-due benefits; (2) establish safeguards where a ''disinterested third party'' pays an attorney's fees or salary on behalf of a claimant or appellant; and (3) simplify notice procedures in connection with motions to review fee agreements for reasonableness and to review a representative's expenses.

Paying Attorney Fees From Past-Due VA Benefits

Beginning during the Civil War, and continuing for more than a century, attorneys and agents were forbidden from charging more than $10 for services in connection with a claim for veterans benefits. In 1988, the ''Veterans' Judicial Review Act'' (VJRA), Pub. L. No. 100–687, Div. A, § 104, 102 Stat. 4105, 4108–09 (1988), removed that limitation, and provided that, under certain circumstances, an attorney or agent could charge a ''reasonable'' fee for such services. 38 U.S.C. 5904.

VJRA permitted a veteran to pay an attorney directly or, under certain conditions, to have the attorney paid by VA directly out of ''past-due benefits'' awarded in connection with a successful claim. Specifically, section 5904(d) of title 38, United States Code, as added in 1988 by VJRA and modified in 1992 by Pub. L. 103–446, permits the Secretary of Veterans Affairs to pay an attorney's fee directly to an attorney out of past-due VA benefits if (1) an agreement between the attorney and the client provides for such a payment; (2) the total fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant; and (3) the total fee does not exceed 20 percent of past-due benefits. In 1992, VA added § 20.609 to title 38 of the Code of Federal Regulations, by which, among other things, the Secretary undertook to exercise this discretionary authority.

This document proposes to change the regulations to state that VA will not pay attorney fees out of past-due benefits. This proposal is based on a number of reasons.

First, the program puts a strain on the already overburdened Veterans Benefits Administration (VBA), which operates VA's 58 regional offices. Paying attorney fees from past-due benefits requires that some of the money due a claimant be withheld pending a determination—made by the Board of Veterans' Appeals—that the agreement meets the statutory and regulatory requirements for payment. Because almost all awards of benefits are made at individual regional offices, and because section 5904 permits VA to pay attorney fees only from past-due benefits, VBA has had to develop strict and complex procedures for withholding money. This in turn has required the designation of at least one ''attorney fee coordinator'' at each of the 58 regional offices, the involvement of at least one employee from the finance activity and from the agent cashier at those offices, as well as a significant amount of correspondence between the Board and the various regional offices on this issue—direct participation by as many as 175 VBA employees.

Second, the anticipated growth in attorney representation before VA has not materialized. The percentage of appellants represented by attorneys in completed Board proceedings has varied only slightly during the period 1993–96: 3.0 percent (786/26,400) (1993); 3.9 percent (861/22,045) (1994); 3.1 percent (873/28,195) (1995); and 3.4 percent (1,160/33,944) (1996).

Third, few attorneys ever qualify for payment from past-due benefits. In every case which results in the payment of past-due benefits and in which an attorney has filed an agreement with the claimant to be paid directly from past-due benefits, the Board makes a determination as to whether the agreement meets the statutory and regulatory standards for payment. Of the 110,584 decisions the Board issued during fiscal years 1993 through 1996, only 222 were decisions on fee agreements in which an attorney was to be paid from past-due benefits awarded. Those 222 decisions made over four years have required the special support of as many as 175 VBA employees per year, most of whom would have been spending their time in activities more directly benefiting veterans and their families: deciding claims and coordinating benefit payments.

Finally, a recently-completed study ordered by Congress recommends that VA get out of the business of paying attorney fees. Thus, the Veterans' Claims Adjudication Commission, established by Congress to determine means for increasing the efficiency of the VA system for claims disposition, found that:

The provision for payment by VA of attorney fees from past-due benefits is administratively cumbersome and distorts the role of government. Attorney representatives and veterans should be expected to transact fee payments between themselves. VA should not be involved in these transactions. * * * The provision for VA to compensate attorneys from awards of past-due benefits thrusts VA into a business that is excessively far from its central purpose. VA is not well suited to perform this function, and the requirement that it do so represents a significant opportunity cost. The resources used for this purpose would be better spent in activities of more direct benefit to veterans.

The Veterans' Claims Adjudication Comm'n, *Report to Congress* 130 (Dec. 1996). VA concurs in those findings and the conclusion.

While we believe that the right to hire an attorney is an important one, we do not believe that eliminating payment by the Department will materially affect the availability of such services. We think that a veteran is as able as anyone else to transact a fee payment without the intervention of the Department. These proposed amendments will not interfere with a claimant's ability to pay attorney fees directly to his or her attorney out of past-due benefits.

For all these reasons, we propose to amend 38 CFR 20.609(h), which provides the rules for payment of attorney fees from past-due benefits, by deleting all the current text and replacing it with the following statement: ''The Department of Veterans Affairs will not pay fees directly to an attorney at law from past-due benefits.''

Safeguards Where a ''Disinterested Third Party'' Pays an Attorney's Fee

In 1988, VA amended part 14 of title 38, Code of Federal Regulations, to reflect an opinion from the Office of Legal Counsel of the Department of Justice which concluded that the then-current $10 fee limitation did not apply to third parties not standing to benefit from a veteran's claim. 53 FR 52416, 52418 (Dec. 28, 1988) (38 CFR 14.634(a) (1989)). VA has incorporated the exception for third parties not standing to benefit from a veteran's claim into the current rules governing the payment of attorney fees. An organization, governmental entity, or other disinterested third party may pay attorney fees under circumstances in which a claimant or appellant may not, for example, when there has been no final Board decision with respect to an issue. *See* 38 CFR 20.609(d)(2).

In dealing with this exception over the years, we have reviewed fee agreements that list individuals as ''disinterested third parties'' who appear to be no more than ''straw men,'' i.e., nominal fee payers who really serve as a mere conduit for a prohibited payment

by a claimant or appellant. Typically, such ''disinterested third parties'' will agree to pay a fee equal to some percentage of the amount of any past-due benefits awarded the claimant, contingent on a successful outcome. Indeed, some contracts we have reviewed call for payment of a percentage of the actual past-due benefits by these third parties, a legally impossible feat because of the nonassignability of veterans benefits under 38 U.S.C. 5301.

In this context, VA's General Counsel has informally advised that, if a third party acts as a mere conduit for a prohibited payment by a claimant, the exception in the regulation would not apply.

Accordingly, we propose three amendments to Rule 609(d)(2) (38 CFR 20.609(d)(2)), relating to payment of fees by disinterested third parties.

First, we propose to prohibit, in any case involving a third-party payer, a fee which is contingent, in whole or in part, on whether or not the matter is resolved in a manner favorable to the claimant or appellant. The contingent fee functions as a financing device that enables a client to assert and prosecute an otherwise unaffordable claim. *See, e.g.*, Lester I. Brickman, Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?, 37 UCLA L. Rev. 29, 43 (1989). If a third party agrees to pay an attorney to represent a veteran (or other claimant) because the law bars the attorney from charging the veteran a fee, the issue of ''financing'' the cost of the litigation through a successful outcome is moot: By definition, a disinterested third party will receive no benefit from any award to the veteran, so that the outcome can generate no funds with which to pay the attorney. Nevertheless, we have seen a number of agreements in which a ''disinterested third party'' agrees to pay an amount equal to some percentage of a veteran's past-due benefits, an arrangement that appears to merely set the stage for a transfer from the veteran to the third party to the attorney. In our view, making a fee to be paid by a disinterested third party contingent on the outcome of the claim encourages the parties to break the law. Accordingly, we propose to bar contingent fees in such circumstances.

Second, we propose to establish a presumption that a person who is the spouse, child, or parent of the claimant or appellant, or who resides with the claimant or appellant, is not a disinterested third party. In our view, persons in such relationships usually have some financial or other interest in the success of the claim and are therefore unlikely to be disinterested.

Finally, we propose to require that the attorney or agent file a statement certifying that no agreement exists under which the claimant or appellant will provide anything of value to the third party in return for payment of the fee or salary. We believe that it is the responsibility of an attorney, as an officer of the court, and an agent, as a licensee of VA, to make appropriate inquiries. *Cf.* Fed. R. Civ. P. 11(b) (signature of attorney on court papers certifies, among other things, inquiry by the attorney which is reasonable under the circumstances). We also propose to amend Rule 609(g) (38 CFR 20.609(g)), relating to fee agreements, to clarify that any agreement for the payment of fees must include the name and mailing address of the disinterested third party. This will allow VA to advise such third parties of legal requirements regarding disinterested third parties.

Simplifying Notice Procedures

Both Rule 609(i) (38 CFR 20.609(i)), relating to motions to review attorney fee agreements, and Rule 610(d) (38 CFR 20.610(d)), relating to motions challenging expenses, require service of papers on opposing parties by certified mail, return receipt requested, and require filing signed certificates of receipt with the Board. We do not believe that this level of proof is necessary to ensure that all parties receive copies of various material. Accordingly, we propose to amend both rules to provide that proof of service in such cases will be by filing a statement with the Board certifying that copies have been sent to the other parties by first-class mail, postage prepaid. This is in line with general rules of service in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 5(d) (generally, a certificate of service by a party (or attorney) is sufficient proof of service).

Other Changes

In addition to the changes noted above, we propose to make nonsubstantive changes required for purposes of clarity. We also propose to make changes to correspond to new organization names within the Board.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: December 1, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart A, § 20.3, paragraphs (n), (o), and (p) are redesignated as paragraphs (o), (p), and (q), respectively; and a new paragraph (n) is added to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(n) *Past-due benefits* means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

* * * * *

3. In subpart G, § 20.609, paragraphs (d)(2), (f), (g), (h), and (i) are revised and paragraph (j) is added to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) * * *

(2) *Payment of fee by disinterested third party.* (i) An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a

manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: ''I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.''

* * * * *

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in Rule 20.3(n) (§ 20.3(n) of this part), will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran, the name of each disinterested third-party payer (see paragraph (d)(2)), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420.

(h) *Payment of fees by Department of Veterans Affairs directly to an attorney-at-law from past-due benefits.* The Department of Veterans Affairs will not pay fees directly to an attorney at law from past-due benefits.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable; must be accompanied by all evidence the moving party desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Such motions (other than motions by the Board) must be filed at the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans'Appeals.

(Authority: 38 U.S.C. 5902, 5904, 5905)

4. In subpart G, § 20.610, paragraph (d) is revised, and paragraph (e) is added to read as follows:

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable; must be accompanied by all evidence the claimant or appellant desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to the representative. Such motions must be filed at the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to the claimant or appellant, setting forth the address to which the copy was mailed. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this

chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

[FR Doc. 97–32107 Filed 12–8–97; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ059–0005; FRL–5933–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Maricopa County's Ordinance P–7, Maricopa County Trip Reduction Ordinance, as a revision to the Arizona State Implementation Plan (SIP). EPA's final approval of this proposed rule will incorporate it into the federally approved SIP. EPA has evaluated the rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 8, 1998.

ADDRESSES: Comments may be mailed to: Frances Wicher, Office of Air Planning, (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the ordinance and EPA's evaluation of the ordinance is available for public inspection at EPA's Region 9 office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office Of Air Planning (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

Maricopa County is designated nonattainment and classified as a serious area for ozone, carbon monoxide (CO), and particulate matter. See 62 FR 60001 (November 6, 1997), 61 FR 39343 (July 29, 1996) and 60 FR 30046 (June 7, 1995). Emissions from motor vehicles contribute substantially to exceedances of the national ambient air quality standards for all three pollutants in the Maricopa area. Over the years the State has adopted a comprehensive motor vehicle emission control program including a number of transportation control measures to address this problem.

In 1988, the Arizona legislature adopted a trip reduction program for Maricopa County (see 1988 Session, Arizona House Bill (H.B.) 2206, section 23, codified at Arizona Revised Statutes (A.R.S.) Title 49, Chapter 3, Article 8) and directed Maricopa County to implement the program.

The State submitted this program in its 1988 Carbon Monoxide Plan for the Maricopa County nonattainment area and EPA approved the program as part of its approval of that plan. 53 FR 30224 (August 10, 1988) and 40 CFR 52.120(c)(65)(i)(A)(*l*). In 1990, EPA's approval of the 1988 CO plan was vacated by the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 898 F. 2d 687 (1990). EPA subsequently restored its approval of the control measures in that plan, including the trip reduction program. 56 FR 3219 (January 29, 1991).

Since 1988, the legislature has revised the trip reduction program several times to tighten the trip reduction goals, decrease the threshold size of employers subject to the program from 100 to 50 employees, extend the program to schools, and to otherwise revise the program. In addition, the legislature directed Maricopa County to ''make and enforce'' an ordinance consistent with A.R.S. 49–588 (Requirements for major employers). A.R.S. 49–474.01(B) (1993 6th Special Session, H.B. 2001, section 24). On May 26, 1994, in compliance with the statute, the County subsequently adopted Maricopa County Environmental Services Department (MCESD), Ordinance No. P–7 Maricopa County Trip Reduction Ordinance.

II. Maricopa County Trip Reduction Ordinance

MCESD Ordinance No. P–7 was submitted as a SIP revision by the Arizona Department of Environmental Quality to EPA on August 31, 1995. The submittal became complete by operation of law under CAA section 110(k)(1)(B) on February 29, 1996.

The ordinance requires employers with 50 or more employees or schools with 50 or more employees or students to, among other things, conduct and submit annually an employee/student commute survey (section 7(A)); disseminate information on alternative modes and other trip reduction measures (section 7(E)); develop and submit a trip reduction plan designed to meet target reductions in single-occupant-vehicle (SOV) trips and vehicle miles traveled (VMT) (section 7(C)); and implement the trip reduction plan (section 7 (B) and (D)).

Failure to meet trip reduction goals does not constitute a violation of the ordinance if the employer or school is attempting in good faith to meet the goals (section 13(C)(2)); however, failure to comply with other specific requirements of the ordinance, such as the failure to submit or to implement an approved trip reduction plan, do constitute violations of the ordinance and are subject to penalties as provided in A.R.S. 49–593(D).

The Maricopa County Trip Reduction Program is staffed by the Maricopa County Trip Reduction Program Staff under MCESD. The 1996 annual report on the program states that in 1996, 2,501 employment sites were processed, more than 570,000 employees and students were surveyed, and more than 1,500 trip reduction plans were reviewed. The report demonstrates that the program has been effective in reducing both SOV trips and VMT in the Maricopa area. See Annual Report 1996, Maricopa County Trip Reduction Program, MCESD.

III. Clean Air Act Requirements

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

There are currently no Clean Air Act requirements mandating trip reduction programs (also known as employer commute options or ECO programs). The CAA Amendments of 1990 required severe and above ozone nonattainment areas and serious CO nonattainment areas to adopt ECO programs (see sections 182(d)(1)(B) and 187(b)(2), respectively, of the Clean Air Act as amended on November 15, 1990). However, prior to the July 1996 reclassification of the Maricopa area from a moderate to a serious CO nonattainment area, Congress passed legislation amending section 182(d)(1)(B) to make the adoption and implementation of ECO programs voluntary (Public Law 104–70, § 1, 109 Stat. 773, signed into law on December 23, 1995). Therefore, to be approvable, the ordinance need only meet the general SIP provisions of CAA section 110(a) (1) and (l) and EPA's regulations and policies implementing these provisions.

IV. EPA Evaluation

EPA has evaluated the submitted ordinance and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Specifically, the ordinance is enforceable and there is evidence of sufficient personnel, funding, and authority under State law for Maricopa County to carry out the program. Finally, this ordinance is more stringent than the existing SIP-approved trip reduction program in both applicability (50 employee threshold versus 100 employee threshold in the SIP-approved rule) and in the overall trip and VMT reduction goals. As a result, this ordinance, if approved into the SIP, will strenghten the SIP and not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. CAA section 110(l). Therefore, EPA is proposing to approve MCESD's Ordinance P–7, Maricopa County Trip Reduction Ordinance (May 26, 1994) under section 110(k)(3) of the CAA as meeting the requirements of section 110 (a) and (l).

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

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Carbon monoxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 1, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32185 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50629; FRL–5752–9]

RIN 2070–AB27

Proposed Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke significant new use rules (SNURs) for 12 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or the premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: Written comments must be received by EPA by January 8, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS–50629 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each portion. This claim must be made

at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, EPA issued a SNUR establishing significant new uses for the substances listed in Unit II. of this preamble, OPPTS–50582, August 15, 1990 (55 FR 33303); OPPTS–50585, September 28, 1990 (55 FR 39899); OPPTS–50589, April 17, 1991 (56 FR 15784); OPPTS–50601, September 23, 1992 (57 FR 44070); OPPTS–50613, October 4, 1993 (58 FR 51706); and OPPTS–50620, March 1, 1995 (60 FR 11042) (FRL–4868–4). Because of additional data EPA has received for these substances, EPA is hereby proposing to revoke the SNURs.

I. Rationale for Revocation of the Rules

During EPA's review of the PMNs submitted under section 5(a)(1)(A) of TSCA for the chemical substances subject to this revocation, EPA concluded that promulgation of SNURs under section 5(a)(2) was warranted based on the fact that activities not described in the section 5(e) consent order or the PMN might result in significant changes in human or environmental exposure. Based on these findings, SNURs were promulgated defining such activities as ''significant new uses.''

Based on new data, EPA has revoked, or will revoke the section 5(e) consent orders that are the basis for these SNURs and no longer finds that activities not described in the section 5(e) consent orders or the PMN may result in significant changes in human or environmental exposure nor constitutes ''significant new uses.'' The proposed revocation of SNURs for these substances is consistent with this finding. When this revocation becomes final, notice of intent to manufacture, import, or process these substances for a significant new use will no longer be required. In addition, export notification under section 12(b) of TSCA will no longer be required on the basis of these substances being subject to SNURs.

II. Proposed Revocations and Background

EPA is proposing to revoke the significant new use and recordkeeping requirements under 40 CFR part 721, subpart E for the following chemical substances. In this unit, EPA provides a description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), the date of the revocation of the section 5(e) consent order (where applicable), a summary of the reason for revoking the rule, **Federal Register** reference, docket number, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substances is contained in the rulemaking record referenced below in Unit III. of this preamble.

PMN Number P–87–90

Chemical name: (generic) Methylenebistrisubstituted aniline-.
CAS number: Not available.
Revocation of section 5(e) consent order: September 11, 1997.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33305).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: 90-Day Dietary Study in Rats: Based on toxic effects in the liver and lungs to both males and females, the lowest observed adverse effect level (LOAEL) was 300 parts per million (ppm) (23.4 milligrams/kilograms/day (mg/kg/day) and 28.2 mg/kg/day) and the no observed adverse effect level (NOAEL) was 100 ppm (7.6 mg/kg/day and 8.5 mg/kg/day) respectively. There were no effects noted in the target areas of the eyes and the reproductive organs of the males or females. In addition, three mutagenicity studies, a mouse micronucleus assay, a bacterial mutation assay, and a chromosomal aberration study were conducted. The results demonstrated that the PMN substance is not a gene or chromosome mutagen and confirmed previous negative results in Salmonella typhimurium and *in vitro* in human lymphocytes.
CFR citation: 40 CFR 721.700 (Formerly 40 CFR 721.1395).

PMN Number P–91–55

Chemical name: (generic) Alkylcarbamic acid, alkynyl ester.
CAS number: Not available.
Revocation of section 5(e) consent order: March 11, 1997.
Federal Register *publication date and reference:* September 23, 1992 (57 FR 44064).
Docket number: OPPTS–50601.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The following test data for structurally analogous material was submitted under the terms of the 5(e) consent order. The data showed the 96-hour LC_{50} for fish was 85.0 milligrams/liter (mg/L) and the 48-hour LC_{50} for daphnids was 60.0 mg/L.
CFR citation: 40 CFR 721.2840.

PMN Number P–84–527

Chemical name: (generic) Unsaturated amino ester salt.
CAS number: Not available.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33304).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of the test data submitted under a voluntary testing program for acrylates, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Two long-term dermal bioassays on triethylene glycol diacrylate and triethylene glycol dimethacrylate demonstrated no evidence of carcinogenicity under the test conditions. Refer to Proposed Revocation of SNURs for Certain Acrylate Substances published in the **Federal Register** of June 2, 1997 (62 FR

29688) (FRL–5595–1), for further background information on these test results.
CFR citation: 40 CFR 721.2860 (Formerly 40 CFR 721.980).

PMN Number P–84–537

Chemical name: (generic) Unsaturated amino alkyl ester salt.
CAS number: Not available.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33304).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of the test data submitted under a voluntary testing program for acrylates, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Two long-term dermal bioassays on triethylene glycol diacrylate and triethylene glycol dimethacrylate demonstrated no evidence of carcinogenicity under the test conditions. Refer to Proposed Revocation of SNURs for Certain Acrylate Substances published in the **Federal Register** of June 2, 1997 (62 FR 29688) (FRL–5595–1), for further background information on these test results.
CFR citation: 40 CFR 721.2880 (Formerly 40 CFR 721.983).

PMN Number P–90–549

Chemical name: (generic) Benzoate ester.
CAS number: Not available.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15790).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The substance is not a chromosome mutagen *in vivo* in the mouse micronucleus assay. The 28-day repeated dose oral study in rats demonstrated a NOAEL of 150 mg/kg/day and a LOAEL of 1,000 mg/kg/day based on behavioral changes, liver effects, and blood effects. An oral developmental toxicity study in rats demonstrated a NOAEL of 300 mg/kg/day for both maternal and developmental toxicity. At 1,000 mg/kg/day there was both maternal body weight loss and a decrease in fetal weight in addition to reductions in the incidence of fetal ossification.
CFR citation: 40 CFR 721.2940 (Formerly 40 CFR 721.570).

PMN Numbers P–88–1303, P–88–2177, and P–90–212

Chemical name: Ethane, 1,1-dichloro-1-fluoro-.
CAS number: 1717–00–6.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15791).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Rat Inhalation Carcinogenicity Study: The only significant effects noted were a statistically significant increased incidence of benign testicular interstitial cell tumors in male rats in the mid and high dose ranges (5,000 ppm and 15,000–20,000 ppm). The high dose was ⅓ of the 4-hour LC_{50}. Two Generation Inhalation Reproductive Study: The substance demonstrated reproductive and developmental toxicity at 20,000 ppm. Adult systemic toxicity was evident at 8,000 ppm and 20,000 ppm. The LOAEL was 8,000 ppm and the NOAEL was 2,000 ppm. A Neurobehavioral and Neuropathological Effects Study in Rats: The only effect noted was a significant reduction in brain weight in females exposed to the highest concentration (rats were dosed at 15,000 ppm for 16 weeks and 2 days and observed for effects until week 21 of the study).
CFR citation: 40 CFR 721.3200 (Formerly 40 CFR 721.1007).

PMN Number P–89–776

Chemical name: (generic) Substituted benzenesulfonic acid, alkali metal salt.
CAS number: Not available.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15790).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The substance was not a chromosome mutagen *in vivo* in the mouse micronucleus assay. The no observed effect level (NOEL) for the 90-day oral study in rats is 50 mg/kg/day based on increased liver weights and clinical chemistry changes indicative of hepatotoxicity at 316 mg/kg/day and higher.
CFR citation: 40 CFR 721.4640 (Formerly 40 CFR 721.566).

PMN Number P–86–1662

Chemical name: (generic) Halogenated phosphate ester.
CAS number: Not available.
Revocation of section 5(e) consent order: December 7, 1995.
Federal Register *publication date and reference:* October 4, 1993 (58 FR 51707).
Docket number: OPPTS–50613.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: An oral 28-day repeated dose neurotoxicity study in hens: An NOAEL of 1,000 mg/kg/day was established based on a decrease of brain neurotoxic esterase in the spinal cord and a NOEL of 500 mg/kg/day was established based on no effects observed at this dose level (the next lower dose tested).
CFR citation: 40 CFR 721.5990.

PMN Number P–91–831

Chemical name: Propane, 1,1,1,2,3,3,3-heptafluoro-.
CAS number: 431–89–0.
Federal Register *publication date and reference:* September 23, 1992 (57 FR 44071).
Docket number: OPPTS–50601.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Inhalation Developmental Toxicity Studies in Rats and Rabbits: No effects were noted at

100,000 ppm (the maximum dose tested) in rats or rabbits. No effects were noted in the rangefinding studies at 200,000 ppm. 90-day Inhalation Study in Rats: No effects noted at 78,167 ppm. Cardiac Sensitization Inhalation Study in dogs: The substance is a cardiac sensitizer at 14 percent concentration (140,000 ppm) in air. The NOAEL is estimated at 9.7 percent concentration in air based on no adverse effects noted at 9 percent concentration in air and distinctly irregular heartbeats noted at 10.5 percent concentration in air.
CFR citation: 40 CFR 721.8125.

PMN Number P–90–583

Chemical name: (generic) Reaction product of alkylphenol, tetraalkyl titanate and tin complex.
CAS number: Not available.
Revocation of section 5(e) consent order: May 31, 1995.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15793).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The acute oral LC_{50} is greater than 2,000 mg/kg/day. The mouse micronucleus assay and the ames assay were negative. The 28-day repeated dose oral study in rats demonstrated a NOAEL of 150 mg/kg/day and a LOAEL of 1,000 mg/kg/day.
CFR citation: 40 CFR 721.9260 (Formerly 40 CFR 721.2085).

PMN Number P–89–844

Chemical name: 1,3,5-Triazine-2,4,6-triamine, hydrobromide.
CAS number: 29305–12–2.
Revocation of section 5(e) consent order: January 17, 1996.
Federal Register *publication date and reference:* September 28, 1990 (55 FR 39905).
Docket number: OPPTS–50585.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: A 1-generation oral (dietary) reproductive study in rats demonstrated a NOAEL of 1,600 ppm. At 4,000 ppm there was reduced maternal food consumption during lactation, reduced paternal body weight (bwt), and reduced offspring survival and bwt.
CFR citation: 40 CFR 721.9780 (Formerly 40 CFR 721.2188).

PMN Number P–94–1009

Chemical name: (generic) Trifunctional aliphatic blocked urethane cross-linker.
CAS number: Not available.
Federal Register *publication date and reference:* March 1, 1995 (60 FR 11045).
Docket number: OPPTS–50620.
Basis for revocation: Pursuant to 40 CFR 720.75(e), the submitter withdrew the PMN. Therefore, a new PMN is required before anyone may commence manufacture or import. Since the PMN requirement is applicable to the substance, a SNUR is unwarranted at this time and EPA is revoking the SNUR.
CFR citation: 40 CFR 721.9962.

III. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50629 (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 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–50629. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

IV. Regulatory Assessment Requirements

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled ''Enhancing the Intergovernmental Partnership'' (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. 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 Agency has 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 proposed rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, 721.9962 [Removed]

2. By removing § § 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, and 721.9962.

[FR Doc. 97–32180 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Delist the Red Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the red wolf (*Canis rufus*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that delisting this species may be warranted.

DATES: The finding announced in this notice was made on August 28, 1997.

ADDRESSES: Information, comments, or questions regarding this petition may be submitted to the Red Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: V. Gary Henry (704/258–3939, Ext. 226) at the above address.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the petition is found to present the required information, the Service is also required to promptly commence a review of the status of the species.

The Service has made a finding on a petition to delist the red wolf (*Canis rufus*). The petition, dated August 5, 1995, was submitted by Mr. Rob Gordon, Executive Director, National Wilderness Institute, and was received by the Service on August 15, 1995.

The processing of this petition conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will continue to process the backlog of rulemakings during fiscal year 1997 following two related events: (1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (tier 1), second highest priority (tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions. The processing of this petition falls under tier 3. At this time, the Southeast Region has no pending tier 1 actions and pending tier 2 actions are near completion. Additionally, the guidance states that ''effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3'' (61 FR 64480). The Service announced an extension on October 23, 1997 (62 FR 55268), of the guidance for fiscal year 1997. The 1997 guidance will remain in effect until final guidance for fiscal year 1998 is published in the **Federal Register**.

The petition presents the contention that the red wolf is a gray wolf (*Canis lupus*)/coyote (*C. latrans*) hybrid and references six literature citations to support the discussion of wolf/coyote hybridization. One of these citations includes four separate papers. The petition also cites two references regarding the reason for delisting other species. The petitioner concluded that those delistings were due to errors in the original data and contends that delisting the red wolf is also valid because of original data error. The petitioner also contends that since the red wolf is a cross between two species that are secure and plentiful, the red wolf is not the best available repository of genetic material of an endangered species that could be recovered through back-breeding.

The Service has reviewed the petition, the literature cited in the petition, other available literature and data, and has consulted with experts on wolves and molecular genetics. On the basis of the best scientific and commercial information available, the Service finds that the petition does not present substantial information indicating that delisting this species may be warranted. The following three points summarize the reasons for this finding:

1. Neither the submitted data nor other available data provides conclusive evidence for the contention that the red wolf is a wolf/coyote hybrid.

The petition included attached literature references. These references consisted of a July 1995 *Scientific American* article by Robert K. Wayne and John L. Gittleman and the list of further reading references in that same article. The petition states that substantial new evidence in the form of peer-reviewed scientific papers demonstrates the hybrid origin of the red wolf, and references the research of Wayne and Gittleman as the basis, thus indirectly focusing on the Wayne and Gittleman article. This article is not a peer-reviewed paper and only the senior author has published original research regarding the red wolf. The Service has reviewed the references, along with other data, to determine their content, significance, and relevance to the petitioned action. The Service views the data presented in the petition as (1) a selective misrepresentation of the information contained in the cited references and (2) a misrepresentation of the available scientific and commercial data.

An earlier petition to delist the red wolf as a hybrid based on the mitochondrial DNA (mtDNA) results of Wayne and Jenks (1991) was found not to present substantial information to indicate that delisting was warranted (57 FR 1246; 1992). Much of the supporting evidence for that conclusion is repeated in the finding for this petition. However, the primary focus in this finding is the results and interpretations regarding the nuclear DNA results of Roy *et al.* (1996); Roy *et al.* (1994); and Roy *et al.* (1994).

2. The petition misinterprets recent DNA data as constituting conclusive evidence of hybrid origin of the red wolf.

The DNA studies referenced in the petition support the hypothesis of past hybridizations between the three *Canis* species and that the extent of hybridization between wolves and coyotes in the southeastern United States was extensive. However, the data do not provide evidence of any continuing coyote influence on nuclear DNA in red wolves, and selective captive breeding provides a likely scenario for the possible elimination of such coyote nuclear DNA from existing red wolves. The data do not provide conclusive evidence of the hybrid origin of red wolves or any evidence of phenotypic, morphological, or behavioral traits of coyotes persisting in red wolves.

3. The best scientific and commercial data available support the continued listing of the red wolf.

The Service is required to use the best scientific and commercial data available when making a decision regarding listing or delisting. As discussed above, the scientific data supporting hybridization in red wolves came from a few related studies. These studies suggest past hybridization, but provide no support for continuing hybridization in the existing red wolf populations. The remainder of the relevant scientific data shows that historic and current red wolves lack coyote, gray wolf, or hybrid phenotypic and morphological traits. Dowling *et al.* (1992) and Cronin (1993) specifically address the fact that all available data must be applied to the question and that molecular characters are only one piece of the puzzle and are no more valid than other types of scientific evidence, including morphology, behavior, ecology, ontogeny, and paleontology.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Red Wolf Recovery Coordinator (see **ADDRESSES** section).

Author. The primary author of this document is V. Gary Henry, Red Wolf Recovery Coordinator (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C 1531 *et seq.*).

Dated: August 28, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31837 Filed 12–8–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Reopening of Comment Period on Status Review for Cheetah in Namibia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review; reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the status review of the Cheetah in Namibia, as initiated in response to a petition to reclassify the species in that country from endangered to threatened, will be reopened.

DATES: Comments and information may be submitted through February 1, 1998.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; U.S. Fish and Wildlife Service; Arlington, Virginia 22203 (Fax number 703–358–2276). The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at this address.

FOR FURTHER INFORMATION CONTACT:

Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 19, 1996 (61 FR 11181), the U.S. Fish and Wildlife Service (Service) announced the 90-day finding that a petition to reclassify the cheetah (*Acinonyx jubatus*) in Namibia from endangered to threatened had presented substantial information indicating that the requested action may be warranted. A status review was initiated, with the original comment period ending July 17, 1996. Subsequently, the Service received two new documents that may have major relevance to this issue: a management plan for the cheetah prepared by the Government of Namibia and a final report on a cheetah workshop held by the World Conservation Union (IUCN). In order to consider this new information and any comments thereon, the Service has decided to reopen the comment period until February 1, 1998, and will provide copies of the indicated documents upon request. All comments and information will be considered in making a final decision on whether the requested action is warranted, and will be included in the administrative record.

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 19, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31970 Filed 12–8–97; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 62, No. 236

Tuesday, December 9, 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.

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases, and Corrections: Correction

AGENCY: Assassination Records Review Board.

ACTION: Correction.

SUMMARY: In notice document 97–31904 beginning on page 64,195 in the December 4, 1997, make the following correction: On page 64,200 in the second column and on page 64,201 in the third column the documents listed below were published as Additional Releases in Full but should have been published as Open in Full by Review Board vote in that notice. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

FBI Documents: Opened in Full:

124–10201–10406; 0; n/a
124–10214–10038; 0; n/a

Dated: December 4, 1997.

Thomas E. Samoluk,

Deputy Director.

[FR Doc. 97–32204 Filed 12–8–97; 8:45 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligiblity To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 10/18/97–11/17/97

Firm name	Address	Date petition accepted	Product
Arkay Packaging Corporation	22 Arkay Drive, Hauppauge, NY 11787.	10/23/97	Folding Cartons, Boxes and Cases of Non-Corrugated Paper and Paper Board.
Britt Kennedy Signs, Inc	100 East Chestnut, Amite, LA 70422.	10/30/97	Sign, Name, Address and Similar Plates.
Cedarbrook Manufacturing Corporation.	240 Roberts Avenue, Philadelphia, PA 19144.	10/30/97	Metal Household and Doll Furniture.
MacConnell Research Corporation.	11339 B Sorrento Valley Road, San Diego, CA 92121.	11/04/97	Precision Instruments Used in the Analysis of Blood and Other Liquids.
Autopoint, Inc	1310 Pinefield Avenue, Janesville, WI 53545.	11/07/97	Ball Point Pens.
Ajusta Manufacturing, Inc	821 North River Road, West Bend, WI 53095.	11/07/97	Components of Hydraulic Mechanisms for Jacks, Hospital Beds and Automotive Convertible Tops.
Barnhart Industries, Inc	P.O. Box 278, Barnhart, MO 63012.	11/07/97	Soft Sewing Notions, Garters, Orthodontic Headgear.
Comstock Creations, Inc	190 Sawyer Drive, Durango, CO 81301.	11/07/97	Statuettes and Other Ornaments of Base Metal (Pewter).
RBA Manufacturing Co	217 South Marion Street, Malden, MO 63863.	11/10/97	Women's Lingerie, Children's Clothing and Novelty Items for the Christmas Industry.
Bula, Inc	72 Suttle Street, Durango, CO 81301.	11/12/97	Hats and Other Headgear of Knit Fabric and Wind Jackets.
Faulhaber Company (The)	21–31 Hamilton Street, Monroeville, OH 44847.	11/12/97	Saddles for Bicycles and Lawn Tractors, and Bicycle Parts.
Pryor Novelty Company, Inc	Highway 52, Tuscumbia, MO 65082.	11/13/97	Cedar Wood Novelty Gift Boxes and Chests.
Kaysam Worldwide, Inc	55 Shepherds Lane, Totowa, NJ 07512.	11/17/97	Ceiling, Pilot and Sounding Meteorological Balloons.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of

Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance)

Dated: November 24, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–32156 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On October 14, 1997, the Department of Commerce (the Department) published the final results and partial rescission of the ninth administrative review of the antidumping duty order on certain fresh cut flowers from Colombia (62 FR 53287). Based on the correction of ministerial errors made in those final results with respect to two manufacturer/exporters, and the subsequent changes in duty absorption amounts and the rate for non-selected respondents, we are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Zak Smith, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087 and (202) 482–1279, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1997, we published a notice of *Final Results and Partial Rescission of Antidumping Duty Administrative Review (Final Results*). We received timely allegations of ministerial errors made in the final results by Hosa Ltda (Hosa) and Maxima Farms Group (Maxima) on October 22 & 23, 1997, respectively.

Scope of Review

Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Alleged Ministerial Errors

Hosa

Issue 1: Calculation of CEP Profit

In our final results, HOSA claims that the Department erred by failing to include indirect selling expenses incurred in Colombia in calculating constructed export price (CEP) profit.

DOC Position: We agree with HOSA that we failed to include indirect selling expenses incurred in Colombia in calculating CEP profit. We intended to include indirect selling expenses and have made this correction for the amended final results. We note that this omission was unique to HOSA.

Issue 2: Returned Flowers

HOSA alleges that the Department erred in its calculation of costs associated with returned flowers. HOSA claims that the Department should have used cost of production (COP) rather than constructed value (CV), because CV includes an amount for profit.

DOC Position: The question of whether to use CV or COP is a methodological issue. Our use of CV in this calculation was intentional. Therefore, in accordance with 19 CFR 353.28(d), we do not consider this to be a ministerial error (*see,* 19 CFR 353.28(d) (1996)).

Issue 3: Calculation of Indirect Selling Expenses

While reviewing the above allegations, we discovered an additional ministerial error. When generating the multiplier used in the calculation of indirect selling expenses for CV we did not use the correct number of minicarnations sold in all markets. We have corrected this error.

Maxima

Issue 1: Calculation of Number of Stems of Export-Quality Standard Carnations Sold

Maxima alleges that we failed to increase the number of export-quality stems of standard carnations sold to reflect information obtained at verification regarding home market sales.

DOC Position: We agree with Maxima that the number of stems of export-quality standard carnations sold should be increased by the number of stems sold in the home market. We intended to increase the number pursuant to information gathered at verification and have corrected this error in these amended final results.

Issue 2: Input of Monthly Number of Stems of Minicarnations Transshipped to Third Country

Maxima claims that the final digits of the monthly volumes of minicarnations transshipped through the United States were omitted.

DOC Position: We agree with Maxima and have made this correction in these amended final results.

Duty Absorption

As a result of correcting these ministerial errors, the amount of U.S. sales through affiliated importers has also changed:

Name of company	*Percentage of U.S. affiliated importer sales with margins*
Hosa	15.83
Maxima	31.61

Amended Final Results of Review

As a result of these amended final results, we determine the following percentage weighted-average margins to exist for Hosa and Maxima (both selected respondents) for the period of review (March 1, 1995 through February 29, 1996):

	Percent
Hosa Group	2.01

	Percent
Horticultura de la Sabana S.A.	
Hosa Ltda.	
Innovacion Andina S.A.	
Minispray S.A.	
ProHosa Ltda.	
Maxima Farms Group	3.02
Agricola los Arboles S.A.	
Colombian D.C. Flowers	
Polo Flowers	
Rainbow Flowers	
Maxima Farms Inc.	

Based on the above, the new rate for those companies not selected as respondents is 2.25 percent.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: December 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32211 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom in response to requests by respondents, British Steel Engineering Steels Limited (BSES) and Glynwed Metal Processing Ltd. (Glynwed), and petitioner, Inland Steel Bar Company. This review covers the period March 1, 1996 through February 28, 1997.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of the comment.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill, Gideon Katz or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 353 (1996).

SUPPLEMENTAL INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom on March 22, 1993 (58 FR 15324). On March 7, 1997 we published in the **Federal Register** (62 FR 10521) a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom covering the period March 1, 1996 through February 28, 1997.

In accordance with 19 CFR 353.22(a)(1), BSES and Glywed requested that we conduct an administrative review of their sales, and the petitioner, Inland Steel Bar Company, requested that we conduct an administrative review of BSES's sales. We published a notice of initiation of this antidumping duty administrative review on April 24, 1997 (62 FR 19988). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers two manufacturers/exporters, BSES and Glynwed, and the period March 1, 1996 through February 28, 1997.

Verification

As provided in section 782(1) of the Act, we verified information provided by BSES using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

United States Price

We based United States price on export price (EP), as defined in section 772(a) of the Act, because the merchandise was sold directly by the exporter to unaffiliated U.S. purchasers prior to the date of importation and constructed export price was not indicated by other facts of record.

BSES

The Department calculated EP for BSES based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for foreign inland freight, FOB charges in the United Kingdom, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges, merchandising processing fees, and U.S. inland freight charges, in accordance with 19 CFR 353.41(d). We also made an adjustment for invoice corrections (billing adjustments) made after shipment.

BSES's sales in the United Kingdom and the United States were made in quantities of less than 25 metric tons and 25 metric tons or more. As in all prior segments of the proceeding, where possible we matched U.S. sales to U.K. sales within the same quantity group: 25 tons or more, or less than 25 tons. (*See,*

e.g., Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 58 FR 6207, January 27, 1993; and *Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 62 FR 18744, April 17, 1997.

Glynwed

The Department calculated EP for Glynwed based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for international freight (including foreign inland freight, U.S. inland freight, ocean freight, and vessel loading and handling charges), marine insurance, U.S. Customs duties, brokerage and handling charges, in accordance with 19 CFR 353.41(d). We also made an adjustment for invoice corrections (billing adjustments) made after shipment.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, the Department compared each company's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because each company's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV.

Many of BSES's and Glynwed's home market sales were made to affiliated original equipment manufacturers (OEMs). It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether sales to affiliated parties might be appropriate to use as the basis of NV by comparing prices of those sales to prices of sales to unaffiliated parties, on a model-by-model basis. *See Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.* 60 FR 10900, February 28, 1995. (*See* Preliminary Results, 59 FR 9463, February 28, 1994, for discussion.) Because both BSES and Glynwed made home market sales to affiliated OEMs during the period of review (POR), we tested these OEM sales to ensure that, on average, the affiliated-party sales were made at arm's length. To conduct this test, for each company, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, invoice corrections, rebates, and packing. As a result of our arm's-length test, we disregarded each company's sales to the affiliated OEM customers in the home market where the prices charged to these affiliated customers were less than 99.5 percent of the prices charged to unaffiliated customers. *See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 62 FR 53817, October 16, 1997. We did not require respondents to provide downstream sales by the affiliated OEM customers because these customers further manufactured the subject merchandise into merchandise not covered by the order. Both BSES and Glynwed also sold through affiliated resellers to unaffiliated customers and reported these unaffiliated-customer transactions. We used these unaffiliated transactions in our determination of NV.

Leaded Rod Sales

BSES did not report its home market sales of leaded rod produced by Scunthorpe Rod Mill (SRM) and Templeborough Rod Mill (TRM), affiliated parties of BSES, claiming that such merchandise would not match to its sales of leaded bar to the United States. (Neither BSES nor its affiliates sold leaded rod to the United States during the POR.) BSES provided a list of all SRM's and TRM's leaded rod products, including their product characteristics and product identification control numbers. In addition, BSES provided a sales file that identified every leaded rod product that SRM and TRM produced or sold during the POR. Upon examination of this information, we preliminarily determine that the leaded rod produced by SRM and TRM was neither identical to nor most similar to BSES's sales of leaded bar to the United States during the POR.

Residuals

BSES's product identification number (CONNUM) contains a residual code as one of the physical characteristics in the model matching criteria. Residuals result from impurities in the scrap used for the production of leaded bar. Petitioner claims that, with the inclusion of the residual code, the model match is too narrowly defined, thereby significantly reducing the number of matches possible between U.S. and home market sales. During verification, we found that customers specify the residual level on purchase orders as part of the description of chemical composition. Therefore, we preliminarily determine that residuals are an essential part of the product, and have continued to use residuals, as we have done in prior reviews, as a physical product characteristic for purpose of model matching. *See, e.g., Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 62 FR 18744, April 17, 1997.

Dimensional Ranges

Petitioner argues that respondent should have reported dimensional ranges rather than specific dimensions, claiming that small differences in dimensions will have no effect on cost or commercial value.

The Department found at verification that customers request certain specific dimensions for the home market products and the U.S. products, and BSES produces to those exact dimensional specifications. In addition, we have no information on the record indicating what, if any, dimensional ranges might be more appropriate than specific dimensions for matching purposes. Therefore, the Department is continuing to use specific dimension as one of the physical characteristics for matching purposes for these preliminary results.

Home Market Rebates

During the POR, BSES offered rebates to its customers in the home market.

Petitioner argues that the Department should require BSES to tie rebates to individual transactions and calculate each individual rebate over only those sales benefitting from the rebate rather than over all sales made by the purchaser. During verification, we found that BSES has reported rebates that were specific to individual transactions. Therefore, for these preliminary results, the Department has adjusted home market prices for rebates as reported.

General and Administrative Expenses

Petitioner contends that BSES's reported general and administrative (G&A) expenses appear to be low.

During verification, we examined G&A expenses and found that all such expenses were reported in total.

Cost of Production Analysis

Pursuant to section 773(b) of the Act, for this POR, we initiated an

investigation of sales at less than cost of production (COP) of BSES. We did this because in the administrative review of BSES for the most recent period (as of the time our decision to initiate a COP investigation was made) we disregarded from our calculations BSES's home market sales found to be below the COP. *See Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 62 FR 18744, April 17, 1997. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department had reasonable grounds to believe or suspect that sales at less than the cost of production may have occurred during this review period.

Glynwed was not covered in a prior review or the original investigation of sales at less than fair value (LTFV), and the Department did not receive a sales below cost allegation for Glynwed. Therefore, the COP analysis is only applicable to BSES.

Before making any NV comparisons for BSES, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of BSES's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by BSES in its questionnaire responses. As we deducted selling expenses from home market prices, we also deducted selling expenses from calculated COPs.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of lead and bismuth steel were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the model-specific COP to the reported home market prices less any applicable movement charges, rebates, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a specific model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a specific model during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and because, based on our comparisons of prices to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, as defined in section 773(b)(2)(D) of the Act. Based on this test, we disregarded certain below-cost sales made by BSES.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2), we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on packed, delivered prices to unaffiliated purchasers in the home market, and to affiliated purchasers in the home market to the extent that prices were at arm's-length. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for invoice corrections, rebates, and inland freight. We also made a circumstance-of-sale adjustment for differences in credit insurance and product liability insurance expenses pursuant to section 773(a)(6)(C)(iii) of the Act. Because home market credit insurance expenses and product liability insurance expenses are incurred on a sale-by-sale basis and directly related to sales, we have treated these expenses as direct selling expenses in both the home market and the U.S. market. Accordingly, we made the circumstance-of-sale adjustments by adding the amounts of U.S. credit insurance and product liability insurance for each U.S. sale to the NV, and subtracting the home market amounts from NV. We also added U.S. commissions for each U.S. sale to the NV. In order to adjust for differences in packing between the two markets, we increased home market price by U.S. packing costs and reduced it by home market packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act.

Constructed Value

We only used constructed value with respect to BSES. In accordance with section 773(e) of the Act, we calculated CV based on the sum of BSES's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. We used the costs of materials, fabrication, and general and administrative expenses as reported in the CV portion of BSES's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of BSES's questionnaire response. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by BSES in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We based selling expenses and profit on the information reported in the home market sales portion of BSES's questionnaire response. For selling expenses, we used the average per-unit home market selling expenses of home market sales of the foreign like product, exclusive of sales disregarded under the cost test, weighted by the total quantity sold for these sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, for all home market sales of the foreign like product in the ordinary course of trade, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Commission Offset

Because there are commissions on U.S. sales and not on home market sales for both BSES and Glynwed, we made an adjustment for indirect selling expenses in the home market to offset the U.S. commissions, in accordance with 19 CFR 353.56(b)(1).

We based the commission offset amount on the amount of the home market indirect selling expenses. We limited the home market indirect selling expense deduction by the amount of the commissions incurred on sales to the United States.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
British Steel Engineering Steels Limited (BSES) (formerly United Engineering Steels Limited)	3/1/96–2/28/97	11.90
Glynwed Metal Processing Ltd. (Glynwed)	3/1/96–2/28/97	7.69

Parties to the proceeding may request disclosure within 5 business days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Pursuant to 19 CFR 353.38, any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the ''all others'' rate established in the LTFV investigation (58 FR 6207, January 27, 1993).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22.

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32213 Filed 12–8–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Preliminary Results of Countervailing Duty Administrative Review: Certain Refrigeration Compressors From the Republic of Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, Office of Antidumping/Countervailing Duty Enforcement, Group III, Office IX, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3434, or 482–0165, respectively.

SUMMARY: In response to requests by the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), and the petitioner, Tecumseh Products Company (Tecumseh), the Department of Commerce (the Department) is conducting an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. This review covers the GOS, MARIS, and AMS. AMS was the sole exporter of the subject merchandise to the United States during the period April 1, 1995, through March 31, 1996, the period of review (POR). We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the POR.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their argument (1) a statement of the issue and (2) a brief summary of the argument.

Applicable Statute

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on or after January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) in accordance with the Uruguay Round Agreements Act (URAA).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1996, the GOS, MARIS, and AMS, requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore *(Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation,* (''*Refrigeration Compressors*'') 48 FR 51167, 51170 (November 7, 1983)). On November 19, 1996, petitioner also requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We initiated the review on December 16, 1996 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 61 FR 66017, (December 16, 1996)). The Department is now

conducting this review in accordance with section 751 of the Tariff Act and 19 CFR 355.22. The Department issued a questionnaire on April 9, 1997, and received a joint questionnaire response from the GOS, MARIS, and AMS, on May 27, 1997. On May 27, 1997, the Department extended the time limit for completing these preliminary results until December 2, 1997 (*Extension of Time Limit for Countervailing Duty Administrative Review*, 62 FR 28672, (May 27, 1997)). Subsequently, the Department sent out a supplemental questionnaire on September 23, 1997 and received a joint supplemental questionnaire response on October 7, 1997. We conducted verification in Singapore of the questionnaire responses of the GOS, MARIS, and AMS on October 29 and 31, 1997.

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under *Harmonized Tariff Schedule* (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review period is April 1, 1995 through March 31, 1996, and includes 2 programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively. These two companies, along with the GOS, are the signatories to the suspension agreement.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant determined to exist by the Department in this proceeding with respect to the subject merchandise. The offset entails the collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. *See Refrigeration Compressors*, 48 FR 51167, 51170 (November 7, 1983).

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part VI

The Production for Export Programme under Part VI of the Economic Expansion Incentives Act allows a 90-percent tax exemption on a company's export profit if the GOS designates a company as an export enterprise. In the investigation, the Department preliminarily found this program to be countervailable because ''this tax exemption is provided only to certified export enterprises.'' *See Preliminary Affirmative Countervailing Duty Determination: Certain Refrigeration Compressors from the Republic of Singapore*, 48 FR 39109, 39110 (August 29, 1983). MARIS is designated as an export enterprise and used this tax exemption during the period of review. AMS was not designated an export enterprise under Part VI of the Economic Expansion Incentives Act for the period of review.

According to the Export Enterprise Certificate awarded to MARIS in a letter dated May 12, 1981, MARIS is to receive this benefit on the production of compressors, electrical parts and accessories for refrigerators, and plastic refrigerators. To calculate the benefit, we divided the tax savings claimed by MARIS under this program by the f.o.b. value of total exports of products receiving the benefit for the period of review.

MARIS' response to the Department's countervailing duty questionnaire for this review, which we confirmed at verification, shows that MARIS deducted export charges levied pursuant to the suspension agreement in arriving at an adjusted profit figure, which was then used to calculate exempt export profit for the review period. In the 90–91 administrative review, the Department determined that the amount of the export charge deduction must be added ''back to MARIS' export profit in calculating MARIS' tax savings in order to offset the deduction of the export charges in the review period.'' *See Preliminary Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore*, 57 FR 31175 (July 14, 1992), affirmed in *Final Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore*, 57 FR 46539 (October 9, 1992). Therefore, as the Department did in the 92–93 administrative review, in calculating the benefit from this program, we have added back this deduction. On this basis, we preliminarily determine the benefit from this program during the review period to be 0.23 percent of the f.o.b. value of the merchandise.

(2) Financing Through the Monetary Authority of Singapore

Under the terms of the suspension agreement, MARIS and AMS agreed not to apply for or receive any financing provided by the rediscount facility of the Monetary Authority of Singapore (MAS) for shipments of the subject merchandise to the United States. At verification, we confirmed that, during the period of review neither MARIS nor AMS received any financing through the MAS on subject merchandise exported to the United States. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

Preliminary Results of Review

The suspension agreement states that the GOS will offset completely with an export charge the net bounty or grant calculated by the Department. We preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charges in effect for the period April 1, 1995 through March 31, 1996. We also preliminarily determine the net bounty or grant to be 0.23 percent of the f.o.b. value of the merchandise for the April 1, 1995 through March 31, 1996 review period.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the period April 1, 1995 through March 31, 1996, a negative adjustment may be made to the provisional export charge rate in effect. The adjustments will equal the difference between the provisional rate in effect during the review period and the rate determined in this review, plus interest. The provisional rate, established in the notice of the final results of the 90–91 administrative reviews of the suspension agreement (*See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review*, 57 FR 46539, 46540 (October 9, 1992)) was 5.52 percent. This rate was in effect from April 1, 1995 through March 12, 1996. On March 13, 1996, the Department established in the notice of the final results of the 92–93 administrative review of the suspension agreement a new provisional rate of 3.00 percent (*See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review*, 61 FR 10315 (March 13, 1996)). If the Department's preliminary results do not change in the final, we will notify the GOS that it may refund or credit, in accordance with section B.4.c of the agreement, the difference between the above amounts and the 0.23 percent, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department. The Department will notify the GOS of these adjustments after publication of the final results of this review.

Furthermore, if the final results of this review remain the same as these

preliminary results, the Department intends to notify the GOS that the provisional export charge rate on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 0.23 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States from Singapore of this merchandise during the review period.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32212 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey; Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on certain welded carbon steel pipes and tubes and welded carbon steel line pipe from Turkey. For information on the net subsidy for each reviewed company for each class or kind of merchandise, as well as for all non-reviewed companies, see the *Preliminary Results of Reviews* section of this notice. If the final results remain the same as these preliminary results of administrative reviews, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Reviews* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cheri Caddy, Office of Countervailing Duty/Antidumping Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–2849.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 7984) the countervailing duty orders on certain welded carbon steel pipes and tubes (welded pipe and tube) and certain welded carbon steel line pipe (line pipe) from Turkey. On March 7, 1997, the Department published a notice of ''Opportunity to Request Administrative Review'' (62 FR 10521) of these countervailing duty orders. We received timely requests for reviews from Borusan Birlesik Boru Fabrikalari A.S. (BBBF) and Borusan Ihracat Ithalat ve Dagitim A.S. (Dagitim) (Borusan Group). We also received a timely request from Wheatland Tube Company and Maverick Tube Corporation (petitioners) to conduct reviews of Erciyas Boru Sanayii ve Ticaret A.S. (Erbosan), Yucel Boru ve Profil Endustrisi A.S. (Yucel Boru), Bant Boru Sanayii ve Ticaret A.S. (Bant Boru), Erkboru Profil San ve Tic A.S. (Erkboru), Borusan Group, and Mannesmann—Sumerbank Boru Endustrisi T.A.S. (Mannesmann). We initiated the reviews covering the period January 1, 1996 through December 31, 1996 on April 24, 1997 (62 FR 19988).

In accordance with 19 CFR 355.22(a), the review on welded pipe and tube covers Erbosan, Yucel Boru, Bant Boru, Erkboru, and the Borusan Group. The review on line pipe covers Mannesmann, Yucel Boru, Bant Boru, and Erkboru. These reviews also cover 21 programs.

Erbosan, Yucel Boru, Bant Boru and Erkboru reported that they did not export welded pipe and tube or line pipe to the United States during the period of review (POR). Information obtained from the U.S. Customs Service (Customs) confirmed the companies' statements. Therefore, we are rescinding the reviews with respect to Erbosan, Yucel Boru, Bant Boru and Erkboru. The companies subject to these reviews are the Borusan Group for welded pipe and tube and Mannesmann for line pipe. Although the Borusan Group produces both welded pipe and tube and line pipe, they only exported welded pipe and tube to the United States during the POR.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act.

Scope of Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise: (1) Certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501; and (2) certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not over 16

inches, and with a wall thickness of not less than .065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–L or API–LX. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. *Pre-Shipment Export Credit:* The Export Credit Bank of Turkey (Turk Eximbank) provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program is designed to support export-related industries from the initial stage of production. Loans are made to exporters who commit to export within a specified period of time. Generally, loans are extended for 120 days for industrial goods and cover 50 to 75 percent of the FOB export value. During the POR, both companies under review were eligible for pre-shipment export loans amounting to 50 percent of the FOB value of exports, for a maximum of 120 days. These loans are denominated in Turkish Lira (TL) and repaid in TL. The interest rate charged on these pre-shipment loans is established by Turk Eximbank and is tied to the Central Bank's rediscount rate.

In the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey* 61 FR 30366 (June 14, 1996) (*Pasta*), and in *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews* (62 FR 16782; April 8, 1997) and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews* (62 FR 43984; August 18, 1997) (*Pipe and Tube*), the Department found this program countervailable because receipt of the loans is contingent upon export performance and the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan. In *Pasta,* we found that these loans were tied to specific destinations; however, in the *Pipe and Tube* reviews, we found these loans to be untied. In *Pipe and Tube,* we verified that although an exporter files a loan application in which the export destination is listed, the actual destination of the shipments may be different from the one(s) stated in the loan application. The exporter has to show only that an export has taken place, and provide the foreign currency exchange receipts from the commercial bank to close out the loan with Turk Eximbank. Because the loans are not specifically tied to a particular destination at the time of approval, we determined that the pre-shipment loan program is an untied export loan program. *Pipe and Tube* at 43986. No information has been submitted to the record of this review to warrant reconsideration of that finding. Therefore, we preliminarily determine in these reviews that the pre-shipment loan program is an untied export loan program.

Pursuant to section 771(5)(E)(ii) of the Act, a benefit shall be treated as conferred ''in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' In this case, as the benchmark interest rate, *i.e.,* the rate the recipient would pay on a comparable commercial loan that could actually be obtained by it, we are using company-specific interest rates on comparable commercial loans to calculate the benefit for any pre-shipment loans that were taken out by the Borusan Group or Mannesmann in 1995 and repaid in 1996, and for any pre-shipment loans that were taken out in 1996 and repaid in 1996. Because the rates on commercial loans provided by the Borusan Group and Mannesmann include the customary Bank and Insurance and Services Tax (BIST) of 5 percent of the interest rate and the Resource Utilization Support Fund (RUSF) fee of 6 percent of the interest rate, we have not added these customary bank fees to the benchmark interest rates.

In addition, because Turkey continues to experience persistently high levels of inflation, based on a Consumer Price Index rate of approximately 80 percent during the POR, we also preliminarily determine that it is appropriate to use monthly average short-term interest rates for our benchmark where such rates are available (*see Pasta* at page 30367; *Pipe and Tube* at 43987). In the previous review, when monthly company-specific interest rates were not available, we used monthly average interest rates charged by a commercial bank in Turkey on domestic loans during the POR (*see e.g., Pipe and Tube* at 16783 and 43984). However, these commercial bank rates are unavailable for this POR.

Accordingly, for Mannesmann, in those months where monthly company-specific interest rates were not available, we used, as the benchmark interest rate, the weighted average interest rate for the closest month preceding and closest month following the month in which the company took out a pre-shipment loan. Using these benchmarks, we continue to find pre-shipment export loans to Mannesmann countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could actually obtain in the market.

With respect to the Borusan Group, the company did not have monthly company-specific interest rates. However, it did obtain short-term commercial loans on which interest was paid quarterly. As such, we preliminarily determine that it is appropriate to use company-specific quarterly average short-term interest rates as the benchmark interest rates for this company, because, like the monthly rates, these rates incorporate the impact of high inflation. For one month in the POR, where quarterly commercial interest rates were not available, we used the rate from the following quarter as our benchmark. Using these benchmarks, we continue to find pre-shipment export loans to the Borusan Group countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could actually obtain in the market.

To determine the benefit, we calculated the countervailable subsidy as the difference between actual interest paid on pre-shipment loans during the POR and the interest that would have been paid using the benchmark interest rates. This difference was divided by the company's total export sales during the POR. We adjusted the sales figure to account for foreign exchange differences (''kur farki''), which resulted from the changes in the U.S. dollar/Turkish lira exchange rates. We made the adjustments because despite Turkey's high rate of inflation, Turkish companies do not index any of the figures, other than fixed assets, in their financial statements to account for inflation. Therefore, if we did not make these adjustments, the result would be equivalent to indexing export sales for inflation and thus, would inflate the denominator while the program benefits (the numerator) would remain unindexed. Such a result would unfairly distort the Department's calculation. *Pipe and Tube* at 43988. On this basis,

we preliminarily determine the countervailable subsidy to be 0.19 percent ad valorem for the Borusan Group for welded pipe and tube, and 0.29 percent ad valorem for Mannesmann for line pipe.

2. *Investment Allowances:* The General Incentives Program (GIP) is designed to increase investment in Turkey and to expand the Turkish economy. Under the GIP, companies may apply to the Undersecretariat of Treasury (UT) for investment incentive certificates. The investment incentive certificates entitle the holders to a number of specified benefits, such as investment allowances, related to an investment project. The investment allowance provides companies with a corporate tax exemption of between 30 percent and 100 percent of their total fixed investment depending upon the geographic location, sector and the value of the investment. During the POR, for purposes of GIP, Turkey was divided into three types of geographic regions: (1) Developed; (2) normal; and (3) priority. Companies located in any of the lesser-developed priority regions are entitled to higher rates of deduction than companies located in the developed or normal regions.

Mannesmann and the Borusan Group claimed an investment allowance on their corporate income tax returns filed during the POR. The Borusan Group is located in a region eligible for an investment allowance of 40 percent, while Mannesmann, because it is located in a developed region, is only eligible for the minimum investment allowance of 30 percent, the minimum investment allowance provided to all companies under GIP regardless of location or type of industry. *See e.g., Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Preliminary Results of Countervailing Duty Administrative Review,* 52 FR 47621, 47622 (December 15, 1987), *Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review,* 53 FR 9791 (March 25, 1988), and *Pipe and Tube* at 16784; 43984.

Pursuant to section 771(5A)(D), the Department previously determined that the minimum 30 percent investment allowance provided to all sectors and geographic regions within Turkey is not countervailable because the 30 percent investment allowance is not limited to a specific enterprise or industry or group thereof, nor limited to companies located in specific regions. However, because the Borusan Group received a 40 percent investment allowance, which is 10 percent higher than the minimum 30 percent allowance provided to all sectors and geographic regions within Turkey, the difference results in a higher tax savings to the company due to its geographic location. Therefore, we preliminarily determine that the 10 percent difference results in a countervailable subsidy. *See also Industrial Phosphoric Acid from Israel; Preliminary Results of Countervailing Duty Administrative Reviews,* 61 FR 8255, 8257 (March 4, 1996) and *Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 28841 (June 6, 1996). We also previously determined that the benefits under this program are ''recurring'' because once a company has a fixed asset investment project approved, it becomes eligible to deduct an investment allowance from its corporate income tax returns; therefore, the receipt of the benefit is automatic and continues year to year. *Pipe and Tube* at 16784 and 43984.

To calculate the benefit for the Borusan Group, we first multiplied its total fixed investment by 10 percent, which is the amount the Borusan Group receives above the 30 percent allowance provided to all industries throughout Turkey. We then computed the company's tax rate. The company paid four separate corporate taxes. These included a 25 percent corporate tax, an interim tax in the amount of 10 percent of the corporate tax, a ''stopaj'' tax equal to 10 percent of 75 percent of its net taxable income, and a fund tax equal to 10 percent of the ''stopaj'' tax. The sum of these taxes equals a total corporate tax rate of 35.75 percent. We then multiplied the countervailable portion of the investment allowance deduction by the tax rate of 35.75 percent, and obtained the tax savings for the company. Next, we divided the tax savings by the company's total sales, adjusted for foreign exchange differences, as described above. On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for the Borusan Group for welded pipe and tube, and zero for Mannesmann for line pipe.

3. *Foreign Exchange Loan Assistance*: The Government of the Republic of Turkey (GRT) Resolution Number: 94/5782, Article 4, effective June 13, 1994 concerning the encouragement of exportation, allows commercial banks to exempt certain fees provided that the loans are used in the financing of exportation and other foreign exchange earning activities. We previously determined that this program is specific and, therefore, countervailable within the meaning of section 771(5A)(B), because the exemption of the fees is contingent upon export performance. *Pipe and Tube* at 43991.

During the POR, in connection with merchandise exported to the United States, the Borusan Group received and paid interest on a foreign currency loan from a commercial bank and was exempted from paying the BIST fee of 5 percent of the interest rate and the RUSF fee of 6 percent of the principal. Unlike pre-shipment loans that are denominated in TL where the RUSF fee is 6 percent of the interest rate, the RUSF fee for foreign currency loans is calculated as 6 percent of the principal. Mannesmann did not use the foreign exchange loan assistance in connection with merchandise exported to the United States during the POR.

We have previously determined that the BIST and RUSF fee exemptions are a direct transfer of funds from the GRT providing a benefit in the amount of the exemption. *Pipe and Tube* at 43991. We have also determined in *Pipe and Tube* at 16784 and 43984, that the benefits are recurring because once the company obtains a foreign currency loan, it is automatically exempted from paying the fees.

To calculate the benefit for this program, we computed the exempted fees on the interest or principal, where appropriate, of the Borusan Group foreign currency loan. The loan is dollar denominated. Therefore, we converted these exempted fee amounts to TL using the exchange rate in effect during the month in which the loan was received, and divided the result by the company's total exports of the subject merchandise to the United States, adjusted for foreign exchange differences, as described above. In *Pipe and Tube* at 43991, we used the actual interest exchange rate on the foreign exchange loan documentation examined at verification and that was part of the record in that proceeding. However, in this proceeding, no information was available on the record regarding the actual interest exchange rate on the foreign exchange loan. Therefore, we preliminarily determine that the fees were established when the loan was granted, and calculated the benefit using the exchange rate in effect on that date. On this basis, we preliminarily determine the net subsidy to be 0.43 percent *ad valorem* for the Borusan Group for welded pipe and tube, and zero for Mannesmann for line pipe.

4. *Freight Program:* The GRT Decree number 93/43, effective October 13, 1993, provided freight rebate payments to exporters in the amount of $50 per ton for merchandise exported on Turkish vessels, and $30 per ton for merchandise exported on non-Turkish

vessels. In February 1994, pursuant to GRT Decree 94/4, the rebate was capped at 15 percent of the FOB value of the goods (an increase over the original 10 percent cap). Benefits under this program were provided in the form of 30 percent cash and 70 percent treasury bonds with one-and two-year maturity dates. (In the prior review, the examined companies only received two year bonds). Companies were eligible to receive interest on bonds on the one-year anniversary date of the issuance of the bonds and on the date of the maturity of the bonds. The program was terminated on December 31, 1994, and there will be no payments on shipments made after January 1, 1995.

In *Pipe and Tube,* we determined that these cash grants and bonds are countervailable export subsidies within the meaning of section 771(5A)(B) of the Act. The cash grants and bonds are a direct transfer of funds from the GRT providing a benefit in the amount of the cash grants and bonds. We also determined that the benefits under the Freight Program are ''recurring,'' because once a company has exported and submitted documentation to the Central Bank it becomes eligible for the cash grants or bonds. The receipt of benefits is automatic and continued throughout the life of the program. (*Pipe and Tube* at 43990.) *See also Allocation Section of the General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37268–69, July 9, 1993) (''*General Issues Appendix*'').

During the POR, Mannesmann received cash under the freight rebate program based on exports made between October 1993 and December 1994. Mannesmann also received one- and two-year bonds during the POR with respective maturity dates of 1997 and 1998. The Borusan Group also received cash during the POR based on exports made between October 1993 and December 1994. In addition, the Borusan Group received interest payments during the POR on bonds with maturity dates after the POR.

The Department's practice has been to deem the benefit to be received at the time of export, if the benefit is calculated as a percentage of the FOB value and the amount of the benefit is known at the time of export. *See e.g., Castings* at 44843. Although the benefit under the Freight Program is calculated based on tonnage and not as a percentage of export value, we note that a benefit determined by the amount of the tonnage may also be known at the time of export.

However, as previously determined in *Pipe and Tube*, the facts in this case establish that the exporter did not know the amount of benefit at the time of export. Although the freight payments were stated in U.S. dollars per ton, the benefit was not tied to the U.S. dollar. Therefore, the TL amount ultimately received by the exporter was not necessarily equivalent to U.S. $50 or U.S. $30 per ton. In this regard, the freight program at issue differs from the Export Performance Credit program, where the benefits received in TL were tied to the U.S. dollar. Under that program, we found that the exporter knew at the time of export the benefit to be received, because the exporter received the TL equivalent of the U.S. dollar amount, which was based upon a percentage of the FOB value at the time of export. Therefore, although the exporter ultimately received more TL than if the benefit had been paid at the time of export, due to Turkey's high level of inflation, the exporter still received the equivalent in TL of the U.S. dollar amount which was based upon the percent of FOB value and was known at the time of the export. *Pipe and Tube* at 16787 and 43984. In fact, in February 1995, two months after the termination of the Freight Program, the GRT announced that the benefit from this program would be based on the exchange rate that was in effect on December 31, 1994, regardless of when the shipments occurred. Moreover, given the high inflation rate in Turkey at the time of the shipments (based on a CPI rate of approximately 65 percent in 1993, and 114 percent in 1994), and the GRT's decision on the exchange rate, there was no way for the exporter to predict at the time of export what the benefit would be. This position is consistent with the Department's analysis of a similar program in *Pasta* where we determined that the benefit should be treated as having been bestowed when the cash was received rather than earned. (*See* discussion of *Payments for Exports on Turkish Ships* program in *Pasta* at 30369). As such, we previously determined that the benefits under this program are bestowed when the cash is received with respect to the cash payments, and not when the benefit is earned.

With regard to the bonds portion of the rebate, we previously determined that the benefits from the bonds are bestowed on the date of maturity. *See Pipe and Tube* at 43991. This is due to the fact that, even though there were no restrictions on the sale or transfer of the bonds, because of the rate of inflation, there was no secondary market to allow exporters to convert their bonds to cash. Therefore, the exporters have no choice but to hold the bonds until maturity. *See also Pasta* at page 30368.

The benefits under the freight program are made on a shipment-by-shipment basis. Therefore, where a benefit is tied or can be tied to exports to the United States, we calculate the *ad valorem* subsidy rate by dividing the benefit by the firm's total exports to the United States, adjusted for foreign exchange differences. *See, e.g., Notice of Final Results of Countervailing Duty Administrative Review: Roses and Other Cut Flowers from Columbia,* 52 FR 48847, 48848 (December 28, 1987). We have calculated the benefit for the Borusan Group and the benefit for Mannesmann from this program by dividing the total amount of freight rebates received during the POR by each respondent for exports to the United States by their total exports to the United States during the POR. On this basis, we preliminarily determine the net subsidy to be 2.61 percent *ad valorem* for the Borusan Group for welded pipe and tube, and 3.36 percent *ad valorem* for Mannesmann for line pipe.

5. *Incentive Premium on Domestically Obtained Goods*: Companies holding investment incentive certificates under the GIP are eligible for a rebate of the 15 percent VAT paid on locally-sourced machinery and equipment. Imported machinery and equipment are subject to the VAT and are not eligible for the rebate. (*Pasta* at 30369). The Department determined in *Pasta* that these VAT rebates are countervailable subsidies within the meaning of section 771(5)(D)(ii) of the Act because the rebates constitute revenue foregone by the GRT, and they provide a benefit in the amount of the VAT savings to the company. Also, they are specific under section 771(5A)(C) because their receipt is contingent upon the use of domestic goods rather than imported goods. Further, the Department determined that the benefits under the Incentive Premium program are ''recurring,'' because once a company has received an investment incentive certificate it becomes eligible for the Incentive Premium benefits. The receipt of benefits is automatic and continues from year to year.

Mannesmann did not use this program during the POR. For the rebates received by the Borusan Group during the POR, we divided the amount received by the company's total sales during the POR, adjusted for foreign exchange differences. On this basis, we preliminarily determine that the net countervailable subsidy to be 0.01 per

cent *ad valorem* for the Borusan Group for welded pipe and tube, and zero for Mannesmann for line pipe.

B. Other Program Preliminarily Determined to Confer Subsidies

Deduction from Taxable Income for Export Revenues: In 1995, the Ministry of Finance amended Article 19 of the Income Tax Law by issuing Section 1 of Article 40, to allow companies that export goods or services to deduct 0.5 percent of their hard currency income derived from these export activities from their corporate income taxes.

We preliminary determine that this tax exemption is a countervailable subsidy within the meaning of section 771(5)(D)(ii) of the Act. The exemption represents revenue forgone by the GRT and provides a benefit in the amount of the tax savings to the company. Also, the subsidy is specific under section 771(5A)(B) because its receipt is contingent upon export performance. The Borusan Group and Mannesmann claimed this deduction on their tax returns filed during the POR.

To calculate the countervailable subsidy, we divided the tax savings realized during the POR by the company's total export sales during the POR, adjusted for foreign exchange differences. On this basis, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent ad valorem for the Borusan Group for welded pipe and tube, and 0.16 percent *ad valorem* for Mannesmann for line pipe.

II. Programs Preliminarily Determined to be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

1. Resource Utilization Support Fund
2. State Aid for Exports Program
3. Advance Refunds of Tax Savings
4. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
5. Past Performance Related Foreign Currency Export Loans (Eximbank)
6. Export Credit Insurance (Eximbank)
7. Subsidized Turkish Lira Credit Facilities
8. Subsidized Credit for Proportion of Fixed Expenditures
9. Fund Based Credit
10. Export Incentive Certificate Customs Duty & Other Tax Exemptions
11. Resource Utilization Support Premium (RUSP)
12. Regional Subsidies
    a. Additional Refunds of VAT (VAT + 10%)
    b. Postponement of VAT on Imported Goods
    c. Land Allocation (GIP)
    d. Taxes, Fees (Duties), Charge Exemption (GIP)

Preliminary Results of Review

In accordance with 19 C.F.R. section 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to each administrative review. For the period January 1, 1996 through December 31, 1996, we preliminarily determine the net subsidy to be as follows:

	Assessment Rate (percent)
Manufacturer/Exporter of Line Pipe	
Mannesmann	3.81
Manufacturer/Exporter of Pipe and Tube	
Borusan Group	3.26

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect a cash deposit of 3.26 percent of the f.o.b. invoice price on all shipments of pipe and tube from the Borusan Group, and 3.81 percent of the f.o.b. invoice price on all shipments of line pipe from Mannesmann, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR section 355.22(a). Pursuant to 19 CFR section 355.22(g), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR section 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR section 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies under each order at the most recent company-specific or country-wide rate applicable to the company under that order. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review*, 53 FR 9791. These rates shall apply to all non-reviewed companies, including those companies for which the reviews are being rescinded, until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

Public Comments

Parties to these proceedings may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR section 355.38.

Representatives of parties to these proceedings may request disclosure of

proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR section 355.38, are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32214 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prevents military recruiter access to the campus or students or maintains a policy against ROTC. It also implements the requirements set forth in the Omnibus Consolidated Appropriations Act of 1997 and 32 CFR Part 216. Currently, a single institution is ineligible for contracts of grants, the Washington College of Law of American University, Washington, DC.

Recently, William Mitchell College of Law reported modifications to school policies sufficient to merit removal from the list of ineligible schools.

ADDRESSES: Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On October 6, 1997 (62 FR 52091), the Department of Defense published 32 CFR part 216 as an interim rule. This rule requires that the Department of Defense semi-annually publish a list of the institutions of higher education ineligible for Federal funds due to a policy or practice that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students or that has an anti-ROTC policy. On November 18, 1997 (62 FR 61495), the Department of Defense published a list of the institutions of higher education ineligible for Federal Funding; this listing updates and supersedes that listing.

Dated: December 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–32084 Filed 12–8–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming Quarterly Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to provide transitional training to the incoming 1998 Executive Committee members and an awards ceremony for the 1997 Executive Committee members. The Meeting will be open to the public, unless otherwise noted below.

DATES: December 8, 1997, 9:15 a.m.–11:30 a.m.

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kay Troutt, USAF, or CDR Deborah R. Goodwin, USN, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D749, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Monday December, 1997

Time	Event
7:10–9:00 a.m	DACOWITS member's arrive/Breakfast (closed to public).
9:15–9:30 a.m	Introductions (3E869—SecDef Conf Rm, open to public).
9:30–10:00 a.m	Executive Committee Transition (open to public).
10:00–11:00 a.m ..	Subcommittee Reviews (open to public).
11:00–11:30 a.m ..	Executive Committee Presentations (open to public).
11:30–1:00 p.m	Lunch (closed to public).
1:30–4:00 p.m	Transition training for members (closed to public).

Late submission due to scheduling conflict.

Dated: December 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 97–32083 Filed 12–8–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Spring General Board Meeting in support of the HQ USAF Scientific Advisory Board will meet in Colorado Springs, CO, on April 22–24, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for 1998 Summer Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–32225 Filed 12–8–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Realignment of the Naval Sea Systems Command

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy announces its decision to relocate the Naval Sea Systems Command from leased spaces in Arlington, Virginia to the Washington Navy Yard, Washington DC.

DATES: This Record of Decision is effective December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Peeling, Office of the Chief of Naval Operations (N456), Crystal Plaza #5, 2211 South Clark Place, Arlington, VA 22244, (703) 604–1232.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision is provided as follows:

Notice of Record of Decision for the Realignment of the Naval Sea Systems Command.

Pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), Pub.L. 101–510, Section 102(2)C of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations for implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy (Navy) announces its decision to relocate the Naval Sea Systems Command (NAVSEA) from leased space in Arlington, Virginia to the Washington Navy Yard (WNY) Washington, DC. The realignment will be accomplished as set out in Alternative One described in the Final Environmental Impact Statement (FEIS) as the preferred alternative.

The Recommendations of the 1995 Defense Base Closure and Realignment (DBCR) Commission, which were approved by the President and accepted by the Congress, directed the Navy to relocate NAVSEA to the WNY or other Government-owned property in the metropolitan Washington, DC area. Section 2904 of the DBCRA requires the completion of this realignment no later than six years from the date the President transmitted the recommendations of the 1995 DBCR Commission to Congress. Consequently, the Navy must complete the NAVSEA realignment no later than July 2001.

In response to the 1995 DBCR Commission recommendation, the Navy established criteria for screening available sites in the metropolitan Washington, DC area. To qualify as a receiver site for NAVSEA, each site must: (1) have sufficient capacity to accommodate the office space required for the 4,100 NAVSEA employees. Based upon a detailed analysis of NAVSEA space needs, one million square feet of office and associated space is required to accommodate NAVSEA personnel and functions; (2) have sufficient capacity to allow location of NAVSEA facilities in a single building or in a closely related complex of buildings; (3) have the capacity to meet National Capital Planning Commission (NCPC) criteria that large federal employment centers be served by public transportation and that federal development be consistent with local development plans and policies; and (4) be available to the Navy on a timely and unencumbered basis, so that NAVSEA's realignment can be completed by July 2001.

Using these criteria, the Navy evaluated eighteen Navy-owned or occupied sites in the metropolitan Washington, DC area. Of these sites, only the Washington Navy Yard met the criteria to accommodate a realigned NAVSEA. Fifteen of those sites did not have sufficient physical capacity to accommodate NAVSEA due to lack of available buildable land and were eliminated from detailed analysis. The Naval Surface Warfare Center at White Oak, Maryland had sufficient buildable land, but was eliminated from detailed analysis because it was identified for closure by the 1995 DBCR Commission. Federal Office Building 2 (Navy Annex) in Arlington, Virginia also had sufficient space, but was eliminated from detailed analysis because the facility could not be cleared of its current occupants, renovated, and re-occupied by NAVSEA by July 2001. Additionally, the Office of the Secretary of Defense owns the Navy Annex and plans to dispose of the property after renovation of the Pentagon is complete.

To determine whether other government-owned property in the metropolitan Washington, DC area would be available for NAVSEA use, the Navy sent letters to the Army and Air Force requesting that they identify any properties which could be utilized. Both services responded by letter that no suitable property in the Washington, DC metropolitan area under their ownership could be made available. Additionally, the Navy considered General Services Administration (GSA) property for potential use by NAVSEA. However, because the WNY already has been shown to have sufficient capacity to accommodate a command the size of NAVSEA, use of GSA property would be inconsistent with Federal Property Management Regulations, 41 CFR Ch 101.

While a No-Action alternative was initially identified, it was eliminated from detailed analysis because Section 2905(c) of the DBCRA expressly exempts decisions to close or realign facilities from NEPA analysis. The four construction alternatives focused on a group of existing buildings within the western area of the WNY. The alternatives vary in the degree of renovation, demolition and new construction required. Alternative One is a mixture of renovation of existing buildings and demolition and new construction. Alternative Two includes the renovation of existing facilities to meet the office space requirement and construction of a twelve level parking garage. Alternative Three favors demolition and new construction over renovation. Alternative Four involves extensive demolition and new construction and a minor amount of renovation.

Alternative One, identified as the Preferred Alternative in the FEIS, provides excellent functionality for the NAVSEA Headquarters. Components of NAVSEA, which must work closely together, are located in a small number of tightly clustered buildings. The employee parking garage is sited directly in the center of the NAVSEA complex with optimum pedestrian access to NAVSEA occupied buildings. The garage can be laid out in a highly efficient four bay configuration, and is served on two sides by two collector streets. Although Alternative One involves potentially adverse impacts on cultural resources due to the demolition of several buildings, the Navy developed a mitigation plan for these impacts. The District of Columbia Office of Historic Preservation and the Advisory Council on Historic Preservation reviewed and approved that plan. The mitigation plan is documented in a Memorandum of Understanding signed by the Navy, the District of Columbia Office of Historic Preservation and the Advisory Council on Historic Preservation on 23 December 1996.

Alternative Two, which consists entirely of renovating existing WNY buildings and involves no demolition, is the environmentally preferable alternative because it minimizes adverse effects on cultural resources. However, it fragments NAVSEA offices into six separate buildings. This dispersed configuration would adversely affect the functioning of NAVSEA as a systems command headquarters. Additionally, the retention of all the existing WNY buildings leaves no suitable site for the required employee parking garage. The garage would be forced into an awkward and inefficient linear configuration allowing only one bay of parking spaces with extensive external ramping to serve its twelve levels. Also, the garage would be served by only one collector street, increasing the potential for traffic

conflicts and bottlenecks within the base.

Alternatives Three and Four were not selected because they would have greater adverse impacts on cultural resources than either Alternative One or Two and they do not offer significantly better functionality than Alternative One.

There are no significant environmental impacts resulting from implementation of Alternative One. The Navy will implement all practical means to avoid or minimize other impacts to the environment. The mitigation measures are summarized at pages 4–28 through 4–31 of the FEIS.

Comments Received on the FEIS: In response to the FEIS, the Navy received comments from one private individual, an environmental planning group associated with the General Services Administration Southeast Federal Center, and the Arlington County (Virginia) Chamber of Commerce. The Environmental Protection Agency (EPA) informed the Navy that it could not comment within the 30-day comment period. To date, the Navy has received no comments from EPA. Responses to similar comments are grouped by issue of concern.

All commentors expressed concern over impacts to local traffic in the vicinity of the WNY. The Navy considered traffic as one of the more important issues of concern related to the proposed action, and acquired the services of a professional traffic consultant familiar with local/regional transportation to conduct studies, analyze potential impacts and advise the Navy concerning traffic related matters. The results of these efforts are contained in the FEIS and a WNY Traffic Management Plan. Although the Navy does not have the authority to regulate off-base traffic or personal privileges of its employees with regard to travel to or from their place of employment, it will limit the development of new parking at the WNY, and modify internal circulation and increase operation of the M Street and Isaac Hull Gate to mitigate potential impacts to local traffic from the mandated realignment. The results of traffic analysis for the proposed action show that the resulting traffic related impacts will not be significant.

The Arlington County Chamber of Commerce expressed concern that the Navy Annex was not included in the FEIS as a reasonable alternative for the NAVSEA Headquarters. The Navy provided a discussion in the FEIS of the criteria and rationale used to identify reasonable alternatives and a brief discussion of the reasons for eliminating other alternatives. As stated in the Background Section of the FEIS, office space at the Navy Annex is currently occupied by Headquarters Marine Corps and the Bureau of Naval Personnel and is therefore unavailable to meet the requirements in terms of space and timing. Utilization of Navy Annex as the receiver site for NAVSEA Headquarters is infeasible because it cannot be vacated of its existing tenants, renovated for new occupancy and re-occupied by NAVSEA within the legally mandated six year timeframe. In addition the property is owned by the Department of Defense, which does not intend to retain this building beyond the completion of the Pentagon renovation project. As a result, it is not analyzed as a feasible alternative in the FEIS.

The Arlington County Chamber of Commerce expressed concern over the adequacy of contamination studies data at the WNY relative to assessing the risks to relocated personnel, and disposal of contaminated materials encountered through project construction. Investigation of contamination at the WNY is being conducted in accordance with established procedures of the Installation Restoration Program and in coordination with the Environmental Protection Agency. These protocols are designed to guide property owners and regulators in deducing the presence of contamination and, if necessary, the appropriate remedial actions. A risk assessment for employees at the WNY, conducted in accordance with Environmental Protection Agency guidelines for contaminated sites, found that there is no significant risk to office workers at the Installation. In direct support of the DBCRA relocation, the Navy also conducted an environmental site investigation of the buildings which will be affected by the NAVSEA projects (Baker, November 1997). The report included several recommendations which will be incorporated into the construction contract to mitigate potential impacts. These mitigations are identified in Section 4.8 of the FEIS. Implementation of the recommendations/mitigation will serve to fully protect construction workers, employees at the WNY, individuals in the surrounding community and the environment. As discussed in the FEIS, specific requirements will be included in the construction contract for the NAVSEA facilities to deal with contaminated materials encountered during construction. These requirements implement applicable regulatory procedures for appropriate treatment and/or disposal of contaminated materials should such materials be found during construction.

The Arlington County Chamber of Commerce also expressed concern that construction of facilities for NAVSEA at the WNY would impede future remediation efforts at the Installation. Surface soil contamination within the project site (former coal storage area), has been remediated. Implementation of Alternative One will not impede future remediation efforts, if required, because it does not significantly affect access to subsurface soil or ground water. Future remediation of subsurface contaminants, if required, would most likely involve a flushing method which would be unaffected by implementation of Alternative One.

The Arlington County Chamber of Commerce expressed concern over the effects of stormwater runoff from the project site. As stated in the FEIS, the project site is covered by impermeable surfaces and construction at the project site will not increase surface runoff. Surface contamination within the project site, associated with the former coal storage pit, has been remediated as part of the Installation Restoration Program. An approved Erosion and Sediment Control Plan for the project will be implemented to contain eroded materials on-site. Water associated with excavation sites will be tested and treated prior to discharge into the sanitary system in coordination with the District Water and Sewer Authority Pretreatment Office. Stormwater control structures will be incorporated into the project design in accordance with regulatory guidance. The repair and/or replacement of existing stormwater conveyances structures throughout the Installation will be completed as part of the National Pollution Discharge Elimination System Permit requirements for the Installation.

The Arlington County Chamber of Commerce expressed concern that airborne material from construction activities will impact surrounding communities. Airborne contaminants associated with project construction will be controlled through the implementation of specific plans prepared in accordance with regulatory guidance. These include an Asbestos Plan, Lead (paint) Removal and Disposal Plan, an erosion and Sediment Control Plan, and various construction related requirements such as the application of dust suppressants, wet mopping, vacuuming, wet cutting and covering open bed haul trucks. Controlling airborne pollutants at the source protects construction workers, WNY employees and the surrounding community.

The Arlington County Chamber of Commerce expressed concern that the FEIS failed to address Environmental Justice issues with regard to the effectiveness of onsite mitigation to protect the surrounding community and that implementation of the DBCRA action takes precedence over Installation Restoration Program efforts at the WNY. The protection provided to on-site personnel through implementation of project related mitigation would extend to those outside the immediate area of the project site. As discussed in the FEIS, the NAVSEA DBCRA action is separate from remediation at the WNY conducted under the Installation Restoration Program. Each has its own regulatory guidelines, scheduling and funding. Development of facilities at the WNY and implementation of the DBCRA realignment of NAVSEA has no bearing on the priority for scheduling of activities conducted under the authority of Installation Restoration Program. Moreover, the relocation of NAVSEA to the WNY will bring jobs to the area and has the potential to benefit current residents of the neighborhood.

The Navy carefully considered all comments received on the FEIS. The FEIS fully addresses all of the issues and concerns identified in the comments received on the FEIS. Therefore, no additional discussion is necessary in this Record of Decision.

Based on the analysis contained in the FEIS and support provided in the administrative record, I select Alternative One to implement the realignment of NAVSEA.

Dated: December 1, 1997.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 97–32104 Filed 12–8–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 3, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Uniform Data System for Assistive Technology Devices and Services.

Frequency: On occasion.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,346.

Burden Hours: 271.

Abstract: Assistive technology (AT) devices and the services can increase opportunities for education, employment, independence, and integration for persons with disabilities. However, many of these individuals have not gained access to AT, despite several federal initiatives to address their AT needs. This data collection will allow the Department of Education to assemble information on the types of AT currently used by this nation's disabled and the funding sources for these devices and services, as specified in the Technology-Related Assistance for Individuals with Disabilities Act, as amended. Subjects will represent two groups: AT service providers (e.g., district special education coordinators, vocational rehabilitation counselors, and state AT project personnel) and (B) consumers of AT devices and services.

[FR Doc. 97–32147 Filed 12–8–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–165]

Application to Export Electric Energy; NP Energy Inc.

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: NP Energy Inc. (NP Energy), a power marketer, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 8, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Diane Stubbs (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a

foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 25, 1997, NP Energy applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, NP Energy has proposed to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

NP Energy would arrange for the exported energy to be transmitted to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of these transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions, comments and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with David G. Schwartz, General Counsel, NP Energy Inc., 3650 National City Tower, 101 South Fifth Street, Louisville, KY 40202 and Margaret A. Moore/John Buchovecky, Van Ness Feldman, Seventh Floor, 1050 Thomas Jefferson Street, NW., Washington, DC 20007–3877.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on December 3, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 97–32176 Filed 12–8–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–65–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 1998:

Thirty-Third Revised Sheet No. 32
Thirty-Third Revised Sheet No. 33
Thirteenth Revised Sheet No. 34

CNG states that the purpose of this filing is to coordinate its rate increase as to small customers with the effective date of CNG's ongoing general rate proceeding in Docket No. RP97–406.

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32133 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–66–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Fourth Revised Sheet No. 11, with an effective date of January 1, 1998.

CIG states that the filing is being made pursuant to CIG's First Revised Volume No. 1, General Terms and Conditions, Article 21.5—Account No. 858 Stranded Costs.

CIG states that copies of its filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32134 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–78–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC

Gas Tariff, the following tariff sheets, to become effective January 1, 1998:

Second Revised Volume No. 1–A

Twelfth Revised Sheet No. 20
Seventh Revised Sheet No. 22
Thirteenth Revised Sheet No. 23
Sixteenth Revised Sheet No. 24
Thirteenth Revised Sheet No. 26
Twelfth Revised Sheet No. 27
First Revised Sheet Nos. 33 through 35

Third Revised Volume No. 2

Forty-second Revised Sheet No. 1–D.2
Thirty-fifth Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation, to revise the Risk Sharing Amounts, and to revise the Reservation Add-On, all as permitted by Sections 25.1 and 25.2 of the Volume No. 1–A Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32141 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DA96–206–002]

The Empire District Electric Company; Notice of Filing

December 3, 1997.

Take notice that on September 3, 1997, The Empire District Electric Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 15, 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. 97–32128 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–610–000]

Granite State Gas Transmission, Inc.; Notice Rescheduling Oral Argument

December 3, 1997.

On September 24, 1997, the Commission issued an Order Setting Proceeding for Oral Argument in the above-docketed proceeding. On October 3, 1997, the Commission issued an order suspending the scheduled oral argument. By this notice, the oral argument which was previously scheduled for October 9, 1997, is rescheduled for Thursday, December 18, 1997, at 9:00 a.m. in a hearing room to be designated at the offices of the Federal Energy Regulatory Commission at 888 1st Street, N.E., Washington, D.C.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32122 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on January 1, 1998:

Tenth Revised Sheet No. 21
Eleventh Revised Sheet No. 22

According to Granite State, the revised tariff sheets above state a surcharge to pass through and collect from its firm transportation customers certain incremental electric power costs that Granite State is obligated to pay Portland Pipe Line Corporation under the terms of a lease of a pipeline from Portland Pipe Line. Granite State further states that the tracking surcharge for the electric power costs was approved by the Commission as part of the settlement in Docket No. RP97–8–000. According to Granite State, the tracking surcharge is adjusted quarterly and the surcharge on the above tariff sheets is applicable for the first quarter of 1998.

Granite State states that copies of its filing have been served on its firm and interruptible transportation customers and on the regulatory agencies of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32142 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–001]

Iroquois Gas Transmission Systems, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following

tariff sheets, with an effective date of November 16, 1997:

Substitute Second Revised Sheet No. 50A
Substitute Original Sheet No. 50B
Substitute Second Revised Sheet No. 107A
Substitute Second Revised Sheet No. 121
Substitute Second Revised Sheet No. 122
Substitute Second Revised Sheet No. 123

Iroquois states that this filing is being made to comply with the Commission's November 13, 1997 order in the above-referenced docket, which direct Iroquois to modify its recent negotiated rate tariff filing within 15 days of its order, by filing revised tariff sheets to be effective November 16, 1997.

Iroquois states that, in compliance with that order, it has (i) revised the definitions of ''Negotiated Rate'' and ''Negotiated Rate Formula,'' (ii) clarified how it will evaluate negotiated rates or bids at negotiated rates when allocating capacity or dealing with capacity releases or right of first refusal, (iii) revised the provision dealing with accounting for costs and revenues associated with negotiated rates, and (iv) removed language added to the provision dealing with segmented capacity releases.

Iroquois also states that copies of its filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32131 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–110–002]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 48. The proposed effective date of this revised tariff sheet is December 1, 1997.

Iroquois states that the instant filing is submitted to comply with the Commission's November 18, 1997 letter order in the captioned proceeding. That order accepted a proposed change in the deferred asset surcharge, but required Iroquois to update the zonal allocation factors set forth on Sheet No. 48 to reflect the zonal allocation factors underlying the currently effective rates. The instant filing complies with that order. Iroquois requests a waiver of Section 154.207 of the Commission's regulations to permit the tariff sheet to become effective on December 1, 1997.

Iroquois states that copies of its filing were served on all parties, all jurisdictional customers and all interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32145 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–103–000]

KN Interstate Gas Transmission Company; Notice of Request under Blanket Authorization

December 3, 1997.

Take notice that on November 26, 1997, KN Interstate Gas Transmission Company, (KNI) P.O. Box 281304, Lakewood, Colorado 80228, filed in the above docket a request pursuant to Sections 157.205(b) of the Commission's Regulations, under the Natural Gas Act [18 CFR 157.205(b)] for authorization to install and operate one new delivery tap located in Scott County, Kansas. This tap will be added as a delivery point to provide transportation service to Allied Energy Services, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, KNI states that Allied, as a provider of energy services, has requested the addition of a delivery point under a transportation service agreement with KNI. KNI states that the proposed delivery point would be located on KNI's main transmission system in Kansas and would facilitate the delivery of natural gas to Allied for sale to a direct retail customer. KNI states further that the cost of the valve and tap is estimated at $20,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32123 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–497–002]

Koch Gateway Pipeline Company; Notice of Refund Report

December 3, 1997.

Take notice that on December 1, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing a final reconciliation report of the Sea Robin Pipeline Company (Sea Robin) Account No. 858 surcharge. On September 29, 1997 Koch filed in Docket No. RP97–497–001, its intentions to terminate the collection of the Sea Robin Account No. 858 surcharge. In a Letter Order dated the 14th October, the Commission accepted these tariff sheets with an effective date of October 1, 1997. This report reflects the amount refunded to each shipper plus the applicable interest earned since October 1, 1997.

Koch has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding as well as each affected customer, state commission, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32130 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–62–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective December 1, 1997:

Third Revised Sheet No. 196A

NGT states that this tariff sheet is filed to remove certain language that is no longer applicable as a result of GISB.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commisson's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32132 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–72–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on January 1, 1998:

39 Revised Sheet No. 50
39 Revised Sheet No. 51
37 Revised Sheet No. 53

Northern states that this filing establishes the 1997–1998, System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32135 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–73–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1998:

41 Revised Sheet No. 50
41 Revised Sheet No. 51

Northern states that the filing revises the current GSR surcharge which is designed to recover Northern's gas supply realignment costs and applicable carrying charges. Therefore, Northern has filed the 41 Revised Sheet No. 50 and 51 to revise the GSR surcharge effective January 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32136 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–74–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 Surcharge and completes the Stranded Account No. 858-Reverse Auction surcharge, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Fortieth Revised Sheet Nos. 50 and 51 and the Thirty Eighth Revised Sheet No. 53 to be effective January 1, 1998.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32137 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–75–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 1, 1998.

Panhandle states that it has not completed the recovery of the Miscellaneous Stranded Costs as of September 30, 1997 and accordingly this filing implements a Miscellaneous Stranded Cost Reservation Surcharge of $0.01 per Dt. applicable to Rate Schedules FT, EFT, and LFT, a Miscellaneous Stranded Cost Reservation Surcharge of 0.06¢ per Dt. applicable to Rate Schedule SCT and a Miscellaneous Stranded Cost Volumetric Surcharge of 0.8¢ per Dt. applicable to Rate Schedules IT and EIT to be in effect during the twelve month Section 18.14 Reconciliation Recovery Period. Panhandle proposes a January 1, 1998 effective date.

Panhandle further states that the derivation of the Miscellaneous Stranded Cost Reservation Surcharge applicable to Rate Schedules FT, EFT, LFT and SCT results in a rate that is less than $0.01 per Dt. and thus, would result in a zero rate for the Miscellaneous Stranded Cost Reservation Surcharge and the underrecovery of the remaining Miscellaneous Stranded Costs. Accordingly, Panhandle proposes to implement a Miscellaneous Stranded Cost Reservation Surcharge of $0.01 per Dt. applicable to Rate Schedules FT, EFT and LFT and a 0.06¢ Miscellaneous Stranded Cost Reservation Surcharge applicable to Rate Schedule SCT to recover the remaining unrecovered balance. As soon as practicable after the amounts surcharged equal or exceed the unrecovered balance, Panhandle will suspend further application of the surcharge, file a final reconciliation report and provide invoice credits, with applicable carrying charges for any excess collections.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32138 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–55–000]

Questar Pipeline Company; Notice of Tariff Filing

December 3, 1997.

Take notice that on November 28, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 5 and Original Volume No. 3, Nineteenth Revised Sheet No. 8, to be effective January 1, 1988.

Questar states that the tendered tariff sheets restate for the calendar year 1998 a 1.4% gas reimbursement rate for tracking fuel-use and lost-and-unaccounted-for gas as required by Section 12.14 of the General Terms and Conditions of Part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah, and the Wyoming 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 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32143 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–561–000]

South Carolina Electric & Gas Company; Notice of Filing

December 3, 1997.

Take notice that on October 29, 1997, South Carolina Electric & Gas Company tendered for filing a report that summarizes transactions that occurred July 1, 1997, through September 30, 1997, pursuant to the Market-Based Tariff accepted by the Commission in Docket Nos. ER96–1085–000 and ER96–3073–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 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 December 12, 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. 97–32127 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–104–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

December 3, 1997.

Take notice that on November 26, 1997, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–104–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to construct and operate a new delivery point for service to King Finishing Company (King), under Southern's blanket certificate issued in Docket Nos. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to King at a new delivery point on Southern's Wrens-Savannah Line in Screven County, Georgia. Southern states that the estimated cost of the construction and installation of the facilities is approximately $227,500. Southern asserts that it will transport gas on behalf of King under Southern's Rate Schedule IT. Southern further asserts that the installation of the proposed facilities will have no adverse effect on Southern's ability to provide its firm deliveries.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32124 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3131–032]

SR Hydropower of Brockway Mills, Inc. SR Hydropower, Inc.; Notice Accepting Late Filing and Establishing Deadline for Responses

December 3, 1997.

On November 1, 1996, Paul V. Nolan, as attorney for the Town of Rockingham, Vermont, filed a motion to intervene, protest, and comments, as well as a complaint and request for investigation relating to events surrounding an application filed August 16, 1996, by SR Hydropower of Brockway Mills, Inc. to surrender its license in Project No. 3131. On December 16, 1996, John Rais filed on behalf of SR Hydropower, Inc. and/or SR Hydropower of Brockway Mills, Inc. a response to Rockingham's November 1, 1996 filings.

On June 2, 1997, Paul Nolan, on behalf of Rockingham filed a letter with the Commission, asserting that the December 16, 1996 filing by John Rais was not timely filed, nor was a copy of the filing served on Rockingingham or Nolan, and should not be accepted for filing. In the June 2, 1997 filing, Nolan answered, in part, certain allegations by Rais concerning a conflict of interest in Nolan's representation of Rockingham in this matter, but reserved the right to respond in full if the Commission should accept Rais's December 16, 1996 filing.

In light of the circumstances described in Rais's December 16, 1996 filing, and the fact that Rockingham has now received a copy of the filing, the filing is accepted. Any further answers to the allegations in that filing concerning Nolan's conflict of interest, or any other matter, must be made by December 19, 1997.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32129 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–105–000]

Transcontinental Gas Pipe Line Corporation and Texas Gas Transmission Corporation; Notice of Application

December 3, 1997.

Take notice that on November 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–105–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon existing Section 7(c) exchange agreements between Transco and Texas Gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco and Texas Gas propose to abandon existing Section 7(c) exchange agreements under Transco's Rate Schedules X–25 and X–55 and Texas Gas' Rate Schedules X–20 and X–50. Transco and Texas Gas, by letter dated July 12, 1996, stated they have agreed to terminate these services, and request abandonment of the exchange agreements to be effective as of the date of the Commission's order approving abandonment.

Transco and Texas Gas further state that the proposed abandonment will not impact either of the certificate holder's peak day or annual deliveries and neither pipeline's tariff prohibits the proposed elimination of rate schedules. Transco and Texas declare no gas has flowed from these points after August 1, 1991, and do not propose to abandon any facilities pursuant to the instant application. Transco and Texas Gas state that no service to any of its other customers will be affected by the abandonment authorizations requested herein.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 24, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32125 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4498–001]

Virginia Electric and Power Company; Notice of Filing

December 3, 1997.

Take notice that on November 17, 1997, Virginia Electric and Power Company tendered for filing a revised form of network integration service agreement providing for its use of its transmission system in connection with requirements service to its wholesale power customers.

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 December 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 97–32126 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ98–2–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1998:

1st Rev Twenty-Fifth Revised Sheet No. 4

WTG states that the tariff sheet and the accompanying explanatory schedules constitute its quarterly PGA filing submitted pursuant to the purchased gas adjustment provisions of Section 19 of the General Terms and Conditions of its tariff. WTG states that copies of the filing were served upon its customers and affected state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32146 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–43–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective January 1, 1998:

Second Revised Volume No. 1

Sixth Revised Sheet No. 6B

Original Volume No. 2

Fourth Revised Sheet No. 362

WNG states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1997.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32144 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–76–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

December 3, 1997.

Take notice that on December 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1998.

Williston Basin states that it is proposing to offer a new type of operational balancing agreement to be entered into on a non-discriminatory basis between Williston Basin and the controlling party who controls the delivery of gas into Williston Basin's system at a telemetered receipt point, all as more fully explained in the filing which is on file with the Commission and open for public inspection.

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, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32139 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–77–000]

Williston Basin Interstate Pipeline Company; Notice of Removal of Gas Research Institute Funding Unit Rates

December 3, 1997.

Take notice that on December 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets to become effective January 1, 1998:

Second Revised Volume No. 1

Twenty-eighth Revised Sheet No. 15
Thirty-first Revised Sheet No. 16
Twenty-seventh Revised Sheet No. 18
Twenty-fourth Revised Sheet No. 21

Original Volume No. 2

Seventy-second Revised Sheet No. 11B

Williston Basin states that on September 16, 1997, it gave advance notice of its resignation from the Gas Research Institute (GRI), in order to give GRI the opportunity to factor such resignation into its planning for funding and all other purposes. Williston Basin further states its future participation in GRI has become untenable due to the uncertainty surrounding GRI's requested and required funding needs both now and into the future. Therefore, the revised tariff sheets reflect the removal of the GRI Funding Unit rates from all applicable rate schedules.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32140 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC95–136–000, et al.]

Florida Power Corporation, et al., Electric Rate and Corporate Regulation Filings

December 2, 1997.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. AC95–136–000]

Take notice that on November 3, 1997, Florida Power Corporation, tendered for filing a letter seeking approval to begin accruing the increase amount of $1,213,656 on a wholesale basis, retroactive to January 1, 1995. FPC states that it is only seeking approval for an increase in the accrual amount, not in rates.

Comment date: December 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. GPU Power Ireland, Inc.

[Docket No. EG98–10–000]

On November 21, 1997, GPU Power Ireland, Inc. (Applicant), of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a Delaware corporation which has been formed to develop a base load peat-fired power plant to be located in East Midlands, Ireland (the Facility). All of the electric energy produced by the Facility will be sold at wholesale to Electricity Supply Board, a statutory corporation with principal offices at 27 Lower Fitzwilliam Street, Dublin 2, Ireland.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. New Energy Ventures, Inc.

[Docket No. ER96–1387–006]

Take notice that on November 5, 1997, Energy Ventures, Inc. (NEV), submitted for filing its quarterly informational reporting regarding transactions to which it was party during the third quarter of 1997 pursuant to its Market-Based Rate Sales Tariff accepted by the Federal Energy Regulatory Commission in Docket No. ER96–1387–000.

Comment date: December 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98–615–000]

Take notice that on November 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and AIG Trading Corp., (AIG).

Cinergy and AIG are requesting an effective date of October 21, 1997.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER98–616–000]

Take notice that on November 10, 1997, Boston Edison Company (Boston Edison) of Boston, Massachusetts, filed a rate schedule containing the rate and non-rate terms and conditions pursuant to which it will for a temporary period purchase the capacity, energy and ancillary services from its to-be divested fossil fuel generating units from the party, whose identity is not now known, acquiring those facilities for periods following the divestiture. Boston Edison has asked that the Commission accept the rate schedule and allow it to become effective on January 10, 1998.

Also take notice that Boston Edison's filing recites that Boston Edison will resubmit the rate schedule identifying the party who has won the bid to acquire its generation and hopes that the revised rate schedule can be submitted by December 5, 1997. Boston Edison's filing states that it will ask the Commission to accept that resubmission and allow the revised rate schedule to become effective on January 10, 1998.

Boston Edison states that its filing has been served on its wholesale requirements customers, on the Massachusetts Department of Public Utilities and, since one of its generators is located in Maine, on the Maine Public Utilities Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER98–617–000]

Take notice that on November 10, 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 a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Tenaska Power Services Co.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER98–618–000]

Take notice that on November 10, 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 a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Company Services, Inc. (Southern), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric Power Company.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER98–619–000]

Take notice that on November 10, 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 a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Company Services, Inc. (Southern), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric Power Company.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Long Island Lighting Company

[Docket No. ER98–620–000]

Take notice that on November 10, 1997, Long Island Lighting Company (LILCO) filed Electric Power Service Agreements entered into as of the following dates by LILCO and the following parties:

Purchaser/Electric Power Service Agreement Date

Constellation Power Source, Inc.—September 25, 1997

New Energy Ventures, L.L.C.—September 25, 1997

The Electric Power Service Agreements listed above were entered into under LILCO's Power Sales Umbrella Tariff. LILCO has proposed modifications to the Power Sales Umbrella Tariff in its November 3, 1997, filing. Upon the Commission's approval of LILCO's proposed modifications, Constellation Power Source, Inc., and

New Energy Ventures, L.L.C., will take service subject to the modified Power Sales Umbrella Tariff.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 1, 1997, for the Electric Power Service Agreements listed above because in accordance with the policy announced in Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶61,139, clarified and reh'g granted in part and denied in part, 65 FERC ¶61,081 (1993), service will be provided under an umbrella tariff and each Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing on the customers which are a party to each of the Electric Power Service Agreements and on the New York State Public Service Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Union Electric Company

[Docket No. ER98–621–000]

Take notice that on November 10, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and Associated Electric Cooperative, Inc., USGen Power Services, L.P., Virginia Electric & Power Company and Williams Energy Services Company. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. North Star Power Marketing, L.L.C.

[Docket No. ER98–622–000]

Take notice that on November 10, 1997, North Star Power Marketing, L.L.C., tendered for filing proposed approval of its FERC Electric Rate Schedule, (Volume No. 1.)

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Company

[Docket No. ER98–623–000]

Take notice that on November 10, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing a service agreement under which Atlantic Electric will sell capacity and energy to Constellation Power Source, Inc., (Constellation) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement be accepted to become effective on October 12, 1997.

Atlantic Electric states that a copy of the filing has been served on Constellation.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER98–624–000]

Take notice that on November 12, 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 a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Duke Power, a division of Duke Energy Corporation for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER98–625–000]

Take notice that on November 12, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Penn Power Company d/b/a Penn Power Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Penn Power Company d/b/a Penn Power Energy as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER98–626–000]

Take notice that on November 12, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Strategic Energy Partners, Ltd., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Strategic Energy Partners, Ltd., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER98–627–000]

Take notice that on November 12, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 21, 1997, with PP&L, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds PP&L, Inc., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER98–628–000]

Take notice that on November 12, 1997, Commonwealth Edison Company (ComEd), submitted for filing Firm Service Agreements with Commonwealth Edison Company, in its wholesale merchant function (ComEd WMD), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 28, 1997, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon ComEd WMD, and the Illinois Commerce Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER98–629–000]

Take notice that on November 12, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and El Paso Energy Marketing Company (EPE), dated November 1, 1997. This Service Agreement specifies that EPE has agreed

to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and EPE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER98–630–000]

Take notice that on November 12, 1997, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy) filed executed Retail Transmission Service Agency Agreements between GPU Energy and Strategic Energy Partners, Ltd., dated October 31, 1997.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER98–631–000]

Take notice that on November 12, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service to Williams Energy Services Company (Williams Energy) pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on November 13, 1997.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. New York State Electric & Gas Corporation

[Docket No. ER98–632–000]

Take notice that on November 12, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 35, service agreements under which NYSEG may provide capacity and/or energy to DPL Energy, Inc. (DPL), LG&E Energy Marketing Inc. (LG&E), NorAm Energy Services, Inc. (NorAm), and Tennessee Valley Authority (TVA)(collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with DPL, LG&E, NorAm, and TVA become effective as of November 13, 1997.

The Service Agreements are subject to NYSEG's Application for Approval of Corporate Reorganization which was filed with the Commission on September 1, 1997, and was assigned Docket No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission, DPL, LG&E, NorAm, and TVA.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER98–633–000]

Take notice that on November 12, 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 Florida Power Corporation (FPC).

Cinergy and FPC are requesting an effective date of November 7, 1997.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER98–634–000]

Take notice that on November 12, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER98–635–000]

Take notice that on November 12, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Revised Form of Service Agreement (FSA) for Firm Point-to-Point Transmission Service between Niagara Mohawk and the Power Authority of the State of New York (Power Authority) for retail delivery of High Load Factor Fitzpatrick Power to BOC Gases in Selkirk, New York. This Revised Form of Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

By its terms, service under the Original FSA filed on July 23, 1997, was to begin with approval by the Commission of the Settlement Agreement between Niagara Mohawk, the Power Authority and the New York State Department of Public Service dated May 22, 1997, and filed with the Commission in Docket No. EL97–29–000 (the May 22, 1997, Settlement Agreement). Service under the Original FSA was to terminate no later than August 31, 1997. The parties to the Original FSA now desire to extend the date for termination of that agreement indefinitely to be terminated upon thirty (30) days written notice by the Power Authority to Niagara Mohawk. Accordingly, Niagara Mohawk herewith tenders six copies of a Revised FSA pursuant to 205 of the Federal Power Act, 16 USC 824d (1993), and 35.13 of the Commission's Rules and Regulations, 19 CFR 35.42. This Revised FSA is identical in all respects to the Original FSA, except that the termination date has been changed.

In order to implement terms of the May 22, 1997, Settlement Agreement, Niagara Mohawk respectfully requests waiver of the Commission's 60-day notice requirement to permit service to be provided under the Revised FSA retroactive to July 1, 1997.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER98–636–000]

Take notice that on November 12, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies), submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that the filing has been served on the affected customers and on the Public Utility Commission of Texas.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Louisville Gas and Electric Company

[Docket No. ER98–637–000]

Take notice that on November 12, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and CMS Marketing, Services and Trading, Inc., under Rate GSS.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER98–638–000]

Take notice that on November 12, 1997, PECO Energy Company (PECO), filed a Service Agreement dated October 29, 1997, with Cinergy Resources, Inc. (CRI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CRI as a customer under the Tariff.

PECO requests an effective date of October 29, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to CRI and to the Pennsylvania Public Utility Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Tampa Electric Company

[Docket No. ER98–639–000]

Take notice that on November 13, 1997, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with Auburndale Power Partners, Limited Partnership (Auburndale) for firm and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of October 17, 1997, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Auburndale and the Florida Public Service Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. PECO Energy Company

[Docket No. ER98–640–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and CNG Retail Services Corp. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32173 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5933–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Retrofit /Rebuild Requirements for 1993 and Earlier Model Year Urban Buses

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Retrofit /Rebuild Requirements for 1993 and Earlier Model Year Urban Buses, EPA ICR Number 1702, OMB Control Number 2060–0302, expiration date: 01–31–98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 9, 1998.

ADDRESSES: U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Attn: Engine Programs & Compliance Division, Retrofit/Rebuild Program 6403J. Interested persons may obtain a copy of the ICR without charge upon request in writing or by telephone or E-mail at the appropriate number below.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Telephone Number: (202) 564–9259, Facsimile Number: (202) 565–2057, E–MAIL Number: Erb.Anthony@epamail.EPA.GOV.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which operate urban bus fleets in regulated areas and equipment manufacturers who manufacture retrofit/rebuild components for certification.

Title: Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (OMB Control No. 2060–0302;

EPA ICR No. 1702.) expiring 01/31/98. Abstract: Section 219(d) of the Clean Air Act, as amended in 1990, requires that the EPA promulgate regulations for urban buses that: (a) Operate in Metropolitan Statistical Areas (MSA) or consolidated MSA's with a 1980 population of 750,000 or more (the program could be expanded in the future to MSA's of less than 750,000, under section 219(c) of the CAA); (b) are not subject to the 1994 or later urban bus standards; and (c) have their engines replaced or rebuilt after January 1, 1995.

The CAA Amendments require the subject urban buses be retrofitted to comply with an emission standard that reflects the best retrofit technology and maintenance practices reasonably achievable. Under these provisions, EPA set new requirements for pre-1994 model year urban buses effective January 1, 1995, when urban bus engines are rebuilt or replaced. The program requires that the particulate emissions level of the urban bus engines be reduced to a level below the engines' original particulate level through the use of retrofit/rebuild equipment that is certified by EPA. The program will phase itself out as pre-1994 urban buses are retired from fleets.

The original ICR for the urban bus retrofit/rebuild program was approved by OMB on 07/22/94 for use through 07/31/97 and later approved for extension until 01/31/97. Candidate equipment is approved under an EPA certification program and if it meets cost guidelines is required to be used. If no equipment is certified for a particular engine the operator is required to restore the equipment to its original or updated configuration based on the currently available rebuild kits on the market. As of July 1997, seven parties have certified ten separate equipment kits under the program over a two year period. It is estimated that 5 equipment certifiers will certify equipment during a given year at an hourly expenditure of an average of 170 hours per certification application including testing, application reporting and follow-up on issues. In addition, each certifier is expected to spend approximately 40 hours per year on record keeping. EPA will conduct 1 audit each year of a certifier of equipment to review production records and manufacturing operations to ensure kits are built and shipped as specified in the certification notification. The burden associated with each certifier audit is estimated to be 24 hours for the certifier to accompany EPA staff, pull records and review associated paperwork.

This regulation effects approximately 150 bus operators who operate fleets of urban buses in areas that are affected. It is estimated that each operator will spend 10 hours per year reviewing regulatory requirements. EPA will request that up to 50 of these operators submit information on their fleet each year to demonstrate compliance with program requirements. It is estimated that each operator will require 8 hours to summarize the requested information for submittal. No burden hours are associated with the record keeping of this information as it is expected that the required records will be kept by operators during the normal course of business. EPA will also conduct up to 12 audits of urban bus operator fleets to ensure compliance with the regulations. These on-site audits involve travel by EPA staff to the site, a review of fleet records and physical inspection of the buses. The burden associated with the audits is expected to be 40 hours for each operator audited. This includes 12 hours preparing records, 20 hours accompanying EPA auditors during the audit and 8 hours to follow-up on issues. The hourly cost associated with the above requirements is estimated to average $64.13 for each of the above burden areas.

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 EPA would like to solicit 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: It is estimated that the annual reporting burden for this request will amount to 6,173 hours. It is estimated that average annual reporting burden for affected parties will amount to 29 hours per response, the proposed frequency of response is annual, and it is estimated that there will be 163 respondents with an average of 1.3 responses each per year . The cost burden to respondents or record keepers resulting from collection of this information is estimated to be $366,000 per year.

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.

Dated: November 28, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–32187 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140264; FRL–5757–8]

Access to Confidential Business Information by U.S. Consumer Product Safety Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the U.S. Consumer Product Safety Commission (CPSC), 4340 East West Highway, Room 600–20, Bethesda, Maryland, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm.

E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under a Memorandum of Understanding (MOU) dated September 23, 1986, CPSC agreed to EPA procedures governing access to CBI submitted to EPA under TSCA. In accordance with 40 CFR 2.306(h), EPA has determined that CPSC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully their responsibilities under the Consumer Product Safety Act and TSCA. CPSC personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined CBI.

In a previous notice published in the **Federal Register** of November 5, 1992 (57 FR 52775; FRL–4173–1), CPSC was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to grant CPSC a 5-year extension to its TSCA CBI access under the existing MOU.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide the CPSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this MOU will take place at EPA Headquarters and CPSC's 4340 East West Highway, Room 600–20, Bethesda, MD site.

CPSC will be authorized access to TSCA CBI at its facility under the *TSCA Confidential Business Information Security Manual*. Before access to TSCA CBI is authorized at CPSC's site, EPA will perform the required inspection of its facility, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, CPSC will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2002.

CPSC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–32181 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140263; FRL–5757–7]

Access to Confidential Business Information by Geologics Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Geologics, Incorporated, 5510 Cherokee Avenue, Suite 260, Alexandria, Virginia and Geologics' subcontractor, Eastern Research Group (ERG), 110 Hartwell Avenue, Lexington, Massachusetts for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA occurred as a result of Agency approval of a waiver request dated September 30, 1997, granting Geologics Incorporated, and their Sub-contractor ERG immediate access to TSCA CBI. This waiver was necessary to allow Geologics and ERG to assist with providing technical, administrative, and computer database support to the new chemicals program.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W7–0036, contractor Geologics, Inc., of 5510 Cherokee Avenue, Suite 260, Alexandria, VA, and ERG of 110 Hartwell Avenue, Lexington, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing technical, administrative, and computer database support to the new chemicals program.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W7–0036, Geologics and ERG will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Geologics and ERG personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Geologics and ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Geologics and ERG will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA Confidential Business Information Security Manual*.

Clearance for access to TSCA CBI under this contract may continue until July 31, 2002.

Geologics and ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 97–32182 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5933–5]

Extension of Period of Submission of Section 111(d) Plans for Existing Municipal Solid Waste (MSW) Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Administrator has determined that it is necessary to extend the submission deadline for section 111(d) Plans for MSW landfills for the States of Alaska, Idaho, Illinois, Kentucky, New York, North Carolina, South Carolina, Tennessee, Texas and Washington as described below. The reasons for this action are set forth in the memorandum, Reasons for Extending Municipal Solid Waste Landfill Section 111(d) Plan Submittal, which is located in the docket and on EPA's website. These Plans, which are required under section 111(d) of the Clean Air Act for existing landfills (40 CFR part 60, subpart B), describe how the State or Local air pollution agency or Indian Tribe will implement the MSW landfill emission guidelines. The guidelines were promulgated on March 12, 1996 under 40 CFR part 60, subpart

Cc (61 FR 9905). The section 111(d) Plans were due December 12, 1996.

ADDRESSES: Office of Air Radiation Docket and Information Center (Air Docket 6102), Room M 1500, U.S. Environmental Protection Agency, Attention: Docket No. A–97–37, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. The Air Docket may be called at (202) 260–7548. The EPA's Office of Air and Radiation Policy and Guidance website: http://www.epa.gov/ttn/oarpg/amend.html

FOR FURTHER INFORMATION CONTACT: For New York, Ms. Christine DeRosa, EPA Region II, 290 Broadway, 25th floor, New York, New York 10007, telephone (212) 637–4022; For Kentucky, North Carolina, South Carolina, and Tennessee, Mr. Scott Davis, EPA Region IV, 61 Forsyth Street, S.W., Atlanta, GA 30303, telephone (404) 562–9127; for Illinois, Mr. Randolph Cano, EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604, telephone (312) 886–6036; for Texas, Mr. Mick Cote, EPA Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, telephone (214) 665–7219; for Alaska, Idaho and Washington, Ms. Catherine Woo, EPA Region X, 1200 Sixth Ave., Seattle, WA 98101, telephone (206) 553–1814.

SUPPLEMENTARY INFORMATION: The EPA promulgated standards of performance for new MSW landfills and emission guidelines for existing MSW landfills on March 12, 1996. These standards of performance and emission guidelines, which were developed under section 111 of the Clean Air Act (CAA), regulate emissions of nonmethane organic compounds from MSW landfills. Section 111(d) of the CAA requires States to submit a Plan to the EPA that addresses how States will regulate, implement and enforce standards of performance on existing MSW landfills. This requirement is codified under 40 CFR 60.23.

However, the EPA Administrator is allowed to extend the period for submission of a section 111(d) Plan under 40 CFR 60.27 whenever he or she determines it is necessary. Alaska, Idaho, Illinois, Kentucky, New York, North Carolina, South Carolina, Tennessee, Texas and Washington have all shown good faith in developing and committing to submit their Plans by the dates specified in this notice. Based on EPA's analysis of the State requests, the following extensions are granted: Alaska, Idaho and Tennessee are granted extensions to December 31, 1997; South Carolina is granted an extension to January 15, 1998; Kentucky is granted an extension to February 15, 1998; Washington is granted an extension to May 31, 1998; North Carolina is granted an extension to July 1, 1998; New York is granted an extension to July 5, 1998 and Illinois and Texas are granted extensions to July 31, 1998. The memorandum, Reasons for Extending Municipal Solid Waste Landfill Section 111(d) Plan Submittal, mentioned previously, documents their efforts and explains why EPA is granting an extension for the section 111(d) Plan submittals to these State air pollution agencies.

(Authority: 42 U.S.C. 7401–7671q)

Dated: December 3, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–32190 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30443; FRL–5756–3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 8, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30443] and the file symbols to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) 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 CBI. Information so marked 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 will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Michael Mendelsohn	5th floor, CS #1, 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA
Linda Hollis	5th fl., CS #1, 703–308–8733, e-mail: hollis.linda@epamail.epa.gov.	Do.
Suku Oonnithan	5th fl., CS #1, 703–308–9524, e-mail: oonnithan.suku@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Product Containing a New Active Ingredient Not Previously Registered

1. File Symbol: 70688–R. Applicant: EcoSoil Systems, 10890 Thornmint Road, Suite 200, San Diego, CA 92127.

Product Name: Ping Fungicide. Fungicide. Active ingredient: *Pseudomonas aureofaciens*, strain Tx-1* at 1.0 percent. Proposed classification/Use: None. For the control diseases on turfgrass. (Mike Mendelsohn)

2. File Symbol: 524–UOI. Applicant: Monsanto Company 700 14th St., NW., Suite 1100, Washington, DC 20005. Product Name: Potato Leafroll Virus Replicase Protein. Plant-Pesticide. Active ingredient: Potato Leafroll Virus Replicase Protein and the genetic material necessary for its production at 7 percent. Proposed classification/Use: None. This pure form of the plant-pesticide, PLRV replicase protein as expressed in potato cells is for use on potatoes. (Linda Hollis)

3. File Symbol: 70644–R. Applicant: LidoChem Inc., 20 Village Court, Hazlet, NJ 07730. Product Name: eKsPunge. Fungicide. Active ingredient: Monopotassium Phosphate (KH_2PO_4 at 100 percent. Proposed classification/Use: None. For the control of powdery mildew on apples, cherries, cucumbers, grapes, mangoes, melons, nectarines, peaches, peppers, plums, summer and winter squash, tomatoes, watermelons, and roses. (Suku Oonnithan)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30443] (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 notice 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 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–30443]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: November 20, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–32184 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee has been established pursuant to the Export-Import Bank Act of 1945, as amended, to advise Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, December 11, 1997, at 9:30 a.m. to 11:45 a.m. The meeting will be held at Export-Import Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of the Best Practices paper.

PUBLIC PARTICIPATION: The meeting will be Open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Gloria Cabe, Room 1214, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3525, not later than December 9, 1997. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 9, 1997, Gloria Cabe, Room 1214, 811 Vermont Avenue, N.W., Washington, D.C. 20571, Voice: (202) 565–3955 or TDD: (202) 565–3377. Publication of this notice was inadvertently delayed.

FURTHER INFORMATION: For further information, contact Gloria Cabe, Room 1214, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3525.

Kenneth Hansen,

General Counsel.

[FR Doc. 97–32247 Filed 12–5–97; 11:06 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATES AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 11, 1997, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

OPEN SESSION

A. *Approval of Minutes*
B. *Report*
—Farm Credit System Building Association Quarterly Report
C. *New Business*
Regulation
—BC Loan Discounting [12 CFR Part

614] (Direct Final)

*CLOSED SESSION

D. *Report*
—OGC Litigation Report

Note: * Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (10).

Dated: December 5, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–32327 Filed 12–5–97; 12:49 pm]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA–97–2352]

LMDS Auction No. 17 Postponed

Released: November 10, 1997.

Report No. AUC–17–C (Auction No. 17)

In an effort to provide a greater opportunity for prospective applicants to participate in the upcoming Local Multipoint Distribution Service (''LMDS'') auction, the Commission is postponing the LMDS auction, originally scheduled to begin on December 10, 1997, until February 18, 1998. This postponement will further opportunities for businesses to access additional sources of capital to further the advent of new competition in the cable television and local telephony marketplaces.

In addition, applicants will be able to take advantage of the World Trade Organization agreement to pursue additional sources of financing and investment. The Commission has proposed amendments to its rules in response to the WTO agreement. Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Order and Notice of Proposed Rule Making,* 12 FCC Rcd 7847, 62 FR 32966, June 17, 1997. Once the Commission has adopted final rules in this proceeding, the Wireless Telecommunications Bureau will release a public notice explaining how these amendments will affect LMDS applicants.

Except for the filing dates and auction schedule, information provided in previous public notices and the LMDS Bidder Information Package remains unchanged. The new schedule is as follows:

FCC Form 175 filing: 5:30 p.m., ET Tuesday, January 20, 1998
Upfront Payments: 6 p.m. ET, Monday, February 2, 1998
Mock Auction: 9 a.m. ET–3 p.m. ET, Friday, February 13, 1998
Auction Begins: 9 a.m. ET Wednesday, February 18, 1998

For further information, please contact Louis Sigalos of the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, at (202) 418–0660.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32011 Filed 12–8–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA–97–2497]

Spectrum Auction Schedule for 1998;

Released: November 25, 1997.

Report No. AUC–17–C (Auction No. 17)

This Public Notice apprises potential applicants of important dates for several auctions that will be conducted in 1998. The dates listed below may be subject to change. A brief summary of the wireless services to be auctioned is provided below. More detailed information concerning each of these auctions has been provided or will be provided at a later date. The wireless services to be auctioned are:

Local Multipoint Distribution Service (''LMDS'')

This auction will consist of 986 LMDS licenses in the 28 GHz and 31 GHz bands. Two licenses will be offered in each of 493 Basic Trading Areas (''BTAs'') and BTA-like areas in the United States. One license, in frequency block A, will authorize service on 1,150 megahertz of spectrum in both the 28 GHz and 31 GHz bands. Block A of the New York BTA is encumbered by a pre-existing licensee in the New York Metropolitan Statistical Area. The incumbent licensee, CellularVision of New York, is entitled to interference protection. The second license, in frequency block B, will authorize service on 150 megahertz of spectrum in the 31 GHz band. Each frequency block encompasses the following spectrum:

Block A (1,150 megahertz): 28 GHz band: 27,500–28,350 MHz and 29,100–29,250 MHz and 31 GHz band: 31,075–31,225 MHz.

Block B (150 megahertz): 31 GHz band: 31,000–31,075 and 31,225–31,300 MHz.

Operations to take place in the 29,100–29,250 MHz band are governed by 47 CFR 101.103(g) and (h), 101.113(c), 101.133(d), and 101.147(t), which are new provisions designed to facilitate the sharing of this spectrum by LMDS, GSO/FSS gateways, and MSS feeder link licenses. These provisions allow only hub-to-subscriber transmissions by LMDS licensees in this band.

Key Dates

Short form (FCC Form 175) Application Deadline: January 20, 1998.
Upfront Payment Deadline: February 2, 1998.
Electronic Bid Submission Software Order Deadline: February 2, 1998.
Mock Auction Date: February 13, 1998.
Auction Commencement Date: February 18, 1998.

Further details on this spectrum may be found in the *LMDS First Report and Order,* CC Docket No. 92–297, 11 FCC Rcd 19005, 61 FR 44177, August 28, 1996; *LMDS Second Report and Order,* CC Docket No. 92–297, FCC 97–82, 62 FR 16514, April 7, 1997 (recon. pending); *LMDS Order on Reconsideration,* CC Docket No. 92–297, FCC 97–166, 62 FR 28373, May 23, 1997; *LMDS Second Order on Reconsideration,* CC Docket No. 92–297, FCC 97–323, 62 FR 48787, September 17, 1997; *Public Notice,* ''Auction of Local Multipoint Distribution Service,'' DA 97–2081, 62 FR 53629, October 15, 1997; *Public Notice,* ''Comment Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction,'' DA 97–2224, 62 FR 55642, October 27, 1997; *Public Notice,* ''LMDS Auction Postponed Until February 18, 1998,'' DA 97–2352 (released November 10, 1997); *Public Notice,* ''Opportunity for Reply Comment on Reserve Prices or Minimum Opening Bids for LMDS Auction Extended,'' DA 97–2420 (released November 18, 1997); and the LMDS auction Bidder Information Package.

220 MHz Service

This auction will consist of 908 licenses in the Phase II 220 MHz service, with three nationwide, 30 Regional Economic Area Groupings (''220 MHz REAGs'') and 875 Economic Area (''EA'') licenses. The licenses encompass the following channels:

	Channels
Nationwide Block:	
Channels 51–60	10
Channels 81–90	10
Channels 141–150	10
EA Block:	
A: Channel Groups 2, 13	10
B: Channel Groups 3, 16	10
C: Channel Groups 5, 18	10
D: Channel Groups 8, 19	10
E: Channel Groups 171–180	10

The Channel Groups indicated in the allocation plan are the 5-channel, non-contiguous assignments identified as ''Group Nos. 1, 2, 3'' *etc.,* in Section

90.721 of the Commission's Rules, 47 CFR 90.721.

	Channels
220 MHz REAG Block:	
F: Channel Groups 1, 6, 11 ..	15
G: Channel Groups 4, 9, 14 ..	15
H: Channel Groups 7, 12, 17	15
I: Channel Groups 10, 15, 20	15
J: Channel Groups 186–200	15

Key Dates

Short form (FCC Form 175) Application Deadline: April 20, 1998.

Upfront Payment Deadline: May 4, 1998.

Auction Commencement Date: May 19, 1998.

Further details on this spectrum may be found in the *220 MHz Second Report and Order,* PR Docket No. 89–552, GN Docket No. 93–252, FCC 96–27, 11 FCC Rcd 3668, 61 FR 3841, February 2, 1997 (recon. pending); and *220 MHz Third Report and Order* and *Fifth Notice of Proposed Rulemaking,* PR Docket No. 89–552, RM–8506, GN Docket No. 93–252, PP Docket No. 93–253, FCC 97–57, 62 FR 16004, April 3, 1997 (recon. pending). Public notices and a bidder information package will provide upfront payment information and specific terms and conditions concerning the auction.

The FCC services also tentatively plans to conduct spectrum auctions for the following services:

Broadband Personal Communications Services (''PCS'') C Block Re-auction—3rd Quarter, 1998

39 GHz—3rd Quarter, 1998

Paging (929—–31 MHz band)—3rd Quarter, 1998

800 MHz Specialized Mobile Radio (''SMR'') (Lower 80 and General Category Channels)—3rd Quarter, 1998

Location Monitoring Services (''LMS'')—3rd Quarter, 1998

Public Coast Stations—4th Quarter, 1998

Pending Analog Broadcast Licenses for Commercial Radio and Television Stations—4th Quarter, 1998

FCC Auctions Telephone Number and Internet Site

All interested parties should contact the FCC National Call Center at 888-CALL–FCC (888–225–5322), Option #2, to request to be put on the mailing list for bidder information packages for the auction or auctions in which they are interested in participating. By doing so, potential applicants ensure that they will receive a bidder information package detailing the specific terms and conditions of the auction. This is the only telephone number to contact to be placed on a mailing list for upcoming auctions.

In order to keep apprised of the FCC's auction schedule (which is subject to change), reports and orders, public notices, and all other relevant auction-related documents, the FCC strongly advises that all interested parties regularly visit its Internet web site. The World Wide Web (''www'') URL address for the Auctions Home Page is: http://www.fcc.gov/wtb/auctions.html.

Bidder Alerts

• The Commission does not approve any individual investment proposal, nor does it provide a warranty with respect to any license being auctioned. Potential applicants and investors are reminded that winning a license in an FCC spectrum auction is not a guarantee of success in the marketplace.

• The FCC makes no representations or warranties about the use of spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies, or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture.

• The Federal Trade Commission (FTC) has found that some unscrupulous individuals have designed investment schemes around licenses auctioned or to be auctioned by the FCC. Investors or potential investors with inquiries or complaints about specific investment offerings may call the National Fraud Information Center, 1–800–876–7060, or visit that organization's Internet web site at www.fraud.org. They also may contact their state attorney general or state corporations office. The FTC and the Securities and Exchange Commission (SEC) receive complaints on investment fraud and offer consumer education materials. Investors or potential investors may contact the FTC at (202) 326–3128 or visit its Internet web site at www.ftc.gov, and may contact the SEC at (202) 942–7040 or visit its Internet web site at www.sec.gov.

• Potential applicants should also be aware that several pending rulemaking proceedings are considering changes to many of the Commission's auctions rules, including whether to continue to permit small businesses to pay for licenses won in installment payments and with respect to attribution of gross revenues of investors in and affiliates of small businesses. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97–82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making,* FCC 97–60, 12 FCC Rcd 5686, 62 FR 13540, March 21, 1997; Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band By the Private Land Mobile Radio Service, PR Docket No. 89–552, *Third Report and Order and Fifth Notice of Proposed Rulemaking,* FCC 97–57, 62 FR 16004, April 3, 1997 (recon. pending); Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Second Report and Order and Further Notice of Proposed Rulemaking,* FCC 97–59, 12 FCC Rcd 2732, 62 FR 11616, March 12, 1997 (recon. pending); and Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *Memorandum Opinion and Order,* FCC 97–224, 62 FR 41225, July 31, 1997). Changes have been adopted with respect to foreign ownership of U.S. telecommunications facilities. Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97–142, Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95–22, *Report and Order and Order on Reconsideration,* FCC 97–398 (adopted November 25, 1997). Finally, potential applicants should be aware that when FCC licenses are subject to auction (*i.e.,* because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established, unless the Commission determines that a reserve price or minimum bid is not in the public interest. Section 3002(a), Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997); 47 U.S.C. 309(j)(4)(F). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 CFR 1.2104(c) and (d). The Commission is presently considering the use of minimum opening bids in the LMDS auction, and will comply with the requirements of the Balanced Budget Act with respect to the other auctions listed herein. *Public Notice,* ''Comment Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction,'' DA 97–2224, 62 FR 55642, October 27, 1997; and *Public Notice,* ''Opportunity

for Reply Comment on Reserve Prices or Minimum Opening Bids for LMDS Auction Extended,'' DA 97–2420 (released November 18, 1997).

For further information contact LaVonia Connelly, Ruby Hough, or Lisa Hartigan, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32012 Filed 12–8–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–009857–006.

Title: Florida-Caribbean Cruise Association.

Parties:

Cape Canaveral Cruise Line
Carnival Cruise Lines
Celebrity Cruises
Costa Cruise Lines
Cunard Line Ltd.
Disney Cruise Line
Holland America Line
Norwegian Cruise Line
Premier Cruises
Princess Cruises
Regal Cruises
Royal Caribbean International

Synopsis: The proposed amendment restates the Agreement. In addition, it makes changes to the composition of the Agreement's executive committee and to the Agreement's membership eligibility provisions.

Agreement No.: 202–011375–035.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
Cho Yang Shipping Co., Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Co., S.A.
DSR-Senator Lines
Pol-Atlantic
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Hyundai Merchant Marine Co., Ltd.
P&O Nedlloyd Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

Snyopsis: The proposed modification establishes guidelines concerning the application of the inland portions of through rates, currency adjustment factor options, and other assessorial charges in successive years of multi-year service contracts.

Agreement No.: 232–011566–001.

Title: NSCSA/Wallenius Line Space Charter Agreement.

Parties: National Shipping Company of Saudi Arabia, Wallenius Rederierna AB.

Synopsis: The proposed modification extends the duration of the Agreement until December 31, 2000. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 3, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32115 Filed 12–8–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Pathfinder Logistics, 10406 8th Avenue So, Seattle, WA 98168–1503, Arthur L. Griffin, Sole Proprietor

J–L International, 63–25B Bourton Street, #2B, Rego Park, NY 11374, James Lee, Sole Proprietor.

Apparel Transportation, Inc., 3101 Northwest 74th Avenue, Miami, FL 33122, *Officers:* Leo Del Calvo, Jr., President; Antonio Yunta, Vice President.

Dated: December 3, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32085 Filed 12–8–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Cancellation of Tariffs of Common Carriers by Water in the Foreign Commerce of the United States and Suspension of Ocean Freight Forwarder Licenses for Failure To File Anti-Rebate Certifications

The Federal Maritime Commission's regulations at 46 CFR 582.1(a) and 582.3(a) require every common carrier by water and licensed ocean freight forwarder in the foreign commerce of the United States to file an Anti-Rebate Certification (''ARC'') with the Commission no later than December 31 of each even-numbered year.

By certified letter dated August 1, 1997, the Commission wrote to certain common carriers and/or licensed ocean freight forwarders who had failed to file the ARC due in December 1996. In that letter, and in a notice published in the **Federal Register** on August 22, 1997 (''Notice''), the Commission advised that, if within 45 days of the certified letter's date, they had not either filed an ARC or established that it had been filed, the tariffs of the common carriers would be cancelled in accordance with 46 CFR 514.1(c)(1)(iii)(C) and/or the licenses of the ocean freight forwarders would be suspended in accordance with 46 CFR 510.16(a)(6).

There were 656 common carriers and/or licensed ocean freight forwarders listed in the Notice. Five hundred four (504) of these carriers/forwarders filed the required ARC. Accordingly, these parties have satisfied the filing requirement, thus their tariffs will not be cancelled nor will their licenses be suspended. (These parties are listed in Attachment C.) The remaining parties either did not respond by filing an ARC or if they did respond indicated that they are no longer operating as common carriers in the foreign commerce of the United States or as ocean freight forwarders.

Accordingly, notice is hereby given that the foreign tariffs for the common carriers listed in Attachment A are cancelled effective the date of publication of this notice in the **Federal Register**. Notice is further given that the ocean freight forwarder licenses for the firms listed in Attachment B are suspended effective the date of publication of this notice in the **Federal Register**. This suspension shall remain

in effect until such time as the license is reinstated by the Commission after an anti-rebate certification is filed. The firms listed in Attachments A and B were notified of this action by certified mail, return receipt requested on November 25, 1997. Notice is further given that the common carriers and licensed ocean freight forwarders listed in Attachment C have either filed ARC's, cancelled their foreign tariffs or have had their ocean freight forwarder licenses revoked for other reasons.

Therefore, it is ordered that the tariffs of the carriers listed in Attachment A are cancelled.

It is further ordered that the ocean freight forwarder licenses of the firms listed in Attachment B are suspended until such time as the license is reinstated by the Commission.

Bryant L. VanBrakle,

Direction, Bureau of Tariffs, Certification and Licensing.

Attachment A—Organization Name

Org. No.	
012259	A.L.S. Associazione Logistica Spedizionieri S.R.L.
013287	A.R.T. Ocean Navigation Shipping Line Limited.
010653	Abacus Transports & Forwarder Ltd.
000155	ABC Containerline N.V.
011106	ACB Ocean Line, Inc.
012296	Agriculture Investment Export, Inc.
011312	Agrolat, Inc.
012741	Aurora Express International Inc.
013180	B.R. Seaxpress Ltd.
013378	Bahamas Provider Line Ltd.
011633	Baltic Shipping Co. (U.S.A.), Inc.
013151	Benemerito, Lisenio R.
011956	Best Container Line Ltd.
013177	Biscayne Shipping S.A., Inc.
008366	Black Sea Shipping Company.
013838	Black Sea Transport Ltd.
014204	Borsan Agencies Inc.
012074	Breakthrough International Co., Inc.
012094	C.B. Marine & Engineering Pty. Ltd.
011620	Cargo Systems Worldwide, Inc.
007486	Carib-Ocean Shipping, Inc.
012194	Caspian Shipping Company.
012581	Catcor Services Inc.
013211	China Eastern Express (H.K.) Ltd.
011603	Choi, Michael.
007956	Chu Kong Shipping Co., Ltd.
011723	Columbia Shipping, Inc. (Houston).
013527	Comet Lines Agency, Inc.
013208	Commnet Transportation, Inc.
012840	Compania Argentina de Navegacion Interoceanica S.A.
012817	Conterm Freight (F.E.) Pte Ltd.
013110	Conterm Freight (Thailand) Co., Ltd.
007318	Continental Seacorp Shipping, Ltd.
011017	Cuban Caribbean Shipping, Inc.
012597	Daily Smart Shipping Co., Ltd.
013009	Dutch Air B.V.
013470	EES Shipping (NSW) Pty. Ltd.
014481	Embona U.S.A.
005698	Empresa Lineas Maritimas Argentinas S.A.
013753	Esmeralda Shipping Company.
014358	Espiritu, Eugenio S.
012383	Eternal Chain Shipping Enterprises Limited.
009318	Eurasia Express (HK) Co., Ltd.
012450	Express International Forwarding.
013358	Express Shipping Lines, Inc.
010825	Fly Dragon Shipping Ltd.
010804	Foong Sun Shipping (Pte) Ltd.
007529	Genesis Container Line, Ltd.
012443	Greensky Shipping Ltd.
012528	Griffiths Line, Inc.
008016	Guardship America, Inc.
010414	Hill & Delamain Group Ltd.
007837	Hub City Los Angeles Terminals, Inc.
010362	Ideal Consolidators Ltd.
013244	Independent Marine Consultants Inc.
013121	Inter-Maritime Container Lines Inc. (IMCL).
008625	Interglobal Shipping Company Limited.
013101	International Moving Service, Ltd.
005934	Interoceanica Ltda.
012331	Intrans Consolidators, Inc.
010834	Isla Dominicana de Petroleos Corporation.
013908	Italcal Group, Inc.
013088	Jefferson Shipping Ltd.

Org. No.	
010878	Jiang Tong Company Limited.
007132	Joklar Ltd.
013441	K & M Shipping, Inc.
006938	Kaitone Shipping Co., Ltd.
006585	Kam International Line.
011670	Keentrans Shipping Company.
008054	Kirk Line, Ltd.
011792	Ko, Young Hee.
013382	Larimar Shipping, Inc.
010674	Laser Lines Ltd. AB.
012020	Lockson Services Limited.
013544	Marine Logistics, Inc.
012859	Maritima de Quintana Roo, S.A. de C.V.
009916	Mercury Ocean Fright Forwarder Co., Ltd.
008617	Meridian Shipping Line, Inc.
012060	Mexican Gulf Line.
012821	Mexus Ro/Ro Line, Inc.
013687	Myung Ma Trans Co., Ltd.
001818	National Shipping Corporation of the Philippines.
011235	Navieros Interamericanos, S.A.
011046	Navimar Lines, C.A.
008125	Nihon Unyu Kaisha, Ltd.
009792	Novocargo USA, Inc.
013132	Ocean Eagle Container Line Inc.
013134	Ocean General Inc.
011192	Oceanic Lloyd Limited.
012513	Orion Maritime Ltd.
011284	P & L Shipping Ltd.
013062	Pacific Freight Services Limited.
012046	Pearl Delta Shipping Co., Ltd.
012106	Pinoy Cargo Freight Forwarders, Inc.
011090	Polar Steamship and Commerce Company Inc.
012641	Portserv Limited.
012637	Prime Trade & Transportation Limited.
013015	Professional Cargo Services Int'l Inc.
013090	Project Asia Steamship Limited.
000858	Randy Express, Inc.
011683	Rapid Transport Ltd.
006214	Rokuchu Marine Corporation.
013590	Rola Shipping Company Limited.
014108	Royal Marine Shipping, Inc.
010477	Saga Transport (HK) Ltd.
011626	Savannah Sound Maritime Company Limited.
013241	Schwaben Express, Inc.
012737	Sea Road Shipping, S.A.
008237	Sekin Transport International Ltd.
007364	Shu, Frank Tao-Ching.
012602	Shui Nam Navigation (H.K.) Ltd.
013102	Siam Paetra International Co., Ltd.
012031	Sino-Place Limited (California).
013235	Southeastern Shipping Lines, Ltd.
012566	Sovereign Container Lines Limited.
010387	Sungwoo Shipping Co., Ltd.
011961	Sunlex Shipping Limited.
014010	Sunny Island Frieght Services Inc.
012689	TCA SRL.
011704	Tellux Shipping Ltd.
008426	Textiles Trans International Ltd.
013807	Titan Carriers Limited.
011196	Top Harbour Shipping Ltd.
013755	Totalmar Transporte C.A.
000545	Trade Ocean Line, Ltd.
008414	Trans Power International Forwarder Corp.
013716	Transeurochart Company Ltd.
012307	Translink Shipping Ltd.
012843	Treasure Coast Transport Company, Inc.
013653	Trenton Container Line Ltd.
011715	Tropical Freight Consolidators, Inc.
010397	Trust Forwarder & Consolidator, Inc.
007836	United American Consolidators, Corp.
014083	United States Ukraine Shipping, Inc.
000073	Universal Alco Ltd.
014424	Universal Transports Ltd.
011317	Vane Sail Shipping Company Ltd.

Org. No.	
011366	Venexpress Lines, Inc.
012357	Venture Shipping Inc.
012138	Vietnam Sea Transport and Chartering Company.
011161	Votainer Far East BV.
013148	Wan Hai Lines Ltd.
012232	Woodlines Shipping Limited.
011614	World-Track Pacific Lines Ltd.
013954	Worldway Shipping Inc.
011963	Zhu Sheng Transportation (HK) Co Ltd.

Attachment B—Organization Name

Org. No.	
007546	Artpak Transport Ltd.
012753	Calberson Inc.
011684	Global International Forwarders Inc.
006477	Kelly International Forwarding Co., Inc.
009347	Sam Young Transportation, Inc.
005125	Saudinvest Transportation & Traffic Services.

Attachment C—Organization Name

Org. No.	
006419	A A A Forwarding Company.
006882	A.H. Carter & Associates, Inc.
004328	A.R. Savage & Son, Inc.
013867	A.L.S. International Transportation (U.S.A.) Inc.
005268	AAA Freight Forwarding Company, Inc.
005629	ABB Intertrade Inc.
012035	ABBA Shipping Lines, Inc.
006565	ABC Freight Forwarders, Inc.
012754	ABCO International Freight (H.K.) Ltd.
013885	Able Freight Services, Inc.
013182	Acap, Consolacion P.
006438	Accord Shipping Co., Inc.
013924	Ace Forwarding, Inc.
002158	Ace Shipping Corp.
008667	Aempac System, Inc.
012161	Aero Expedited, Inc.
014251	Air & Ocean International, Inc.
004758	Air-Mar Shipping, Inc.
012283	Air-Sea International, Inc.
004901	Air/Sea Forwarding Specialist, Inc.
011458	Airconex, Inc.
014510	Akemi & Co., Inc.
010398	Albini & Pitigliani Spa.
012917	Alcala, Lucia.
013901	All American Worldwide, Inc.
011489	All-ways Cargo Services, Inc.
012803	Alliance Brokers International, Inc.
012507	Allyn International Services, Inc.
009922	Almcorp Project Transport, Inc.
004180	Alonso Shipping Company.
012297	Alpha International Cargo Services, L.P.
012523	AMCO Shipping International Limited.
013900	Amerford FMS, Inc.
014015	America Worldwide Inc.
012290	American Business Lines Inc.
013847	American International Brokerage, Inc.
012730	American Lines, Inc.
011604	American One Freight Forwarders, Inc.
005617	American Packing & Shipping, Inc.
013341	American President Business Logistics Services, Ltd.
012847	American Ship Management, Inc.
008795	Amzone International, Inc.
009482	ANR Inc.
014362	AP Transport Services, Inc.
004894	Arabian National Shipping Corp.
004252	Araujo, Ramon.

Org. No.	
011331	Arawak Bahamas Ltd.
010800	Arawak Caribbean Line, Ltd.
012163	Armstrong Transfer & Storage Company, Inc., Atlanta, Georgia.
014211	Arriaga & Associates, Inc.
013672	Asia Star Forwarders Co., Ltd.
009538	Associated Customhouse Brokers Inc.
007353	Associated International Consultants, Inc.
008033	Atlantic International Freight Forwarders Inc.
014347	Atlantic Pacific International, Inc.
007664	Atlantic Transport Co. Ltd.
010650	Aust-Asia Worldwide Shipping Pty. Ltd.
011588	Aviation Import/Export Incorporated.
012180	AXO Industries, Inc.
010791	B & A Brokers Inc.
000330	Babuyan Carriers S.A.
013116	Bahl, Vandana C.
014336	Baltazar, Harry O.
013859	Baltrans USA, Inc.
004852	Banis, Chris T.
004249	Barian Shipping Company Inc.
014100	Barnett Trading, Inc.
014388	Bauhinia International Corp.
006396	Ben-G Incorporated.
014353	Benchmark Transportation Services, Inc.
006672	Bermuda Export Sea Transfer Ltd.
013454	Best Shipping Inc.
004360	Bill Polkinhorn, Inc.
005367	Blackstar Transport Services, Inc.—Acts.
013747	Blair, Elaine.
009796	BLN Express Company.
012159	Blue Star Shipping Corp.
009341	Bridgeport Shipping Lines, Inc.
004874	BWI Corporation.
008135	C & F Worldwide Agency Corp.
006893	Calabro, Francis J.
013155	Calberson Overseas SA.
011176	Caliber Customs Brokers and Freight Forwarders, Inc.
007467	Camelot Company, The.
004750	Cancetty, Fernando L.
011223	Capital Distribution Services Ltd.
013436	Caraval, Inc.
012836	Cargo Co-Ordinators Shipping (H.K.) Ltd.
000685	Cargo Forwarding Inc.
007462	Cargo Import Brokers, Inc.
011359	Cargo Link Services Limited.
014463	Cargo Maritime Services, Inc.
010672	Cargo Transport Inc.
012809	Cargomax International Inc.
012626	Caribbean Freight Forwarders, Inc.
013360	Caribbean Transport Line S.A.
009555	Caribe Express, Inc.
013846	Caribwarp Inc.
011507	Carinter Miami, Inc.
004474	Carl Matusek, Inc.
012482	Cast Logistics (U.S.A.) Limited.
012551	CCCA/FNC.
005647	CDM Transportation Services, Inc.
005409	Celaya-Guerin International, Inc.
011982	CGM Tour du Monde.
009495	Chang, Kil Moon.
008681	Chemical Leaman Tank Lines, Inc.
000747	China National Foreign Trade Transportation Corp.
000749	China Navigation Co. Ltd., The.
008752	China Trading Service Co. Ltd.
004773	Chipman Corporation.
009750	Chun, Song Nam.
011725	City Network Inc.
014105	CJC International Services Inc.
006487	Cole Forwarding, Inc.
013594	Columbia Coastal Transport, Incorporated.
011158	Columbia Shipping Inc. (SFO).
005535	Combined Transport Systems, Inc.
007827	Combitainer Ltd.
010199	Combuilt Services International Ltd.

Org. No.	
011948	Comet Technology Corp.
000784	Compagnie Maritime D'Affretement.
000888	Compania Trasatlantica Espanola, S.A.
009356	Compass Marine Services (U.S.A.), Inc.
009410	Connections International.
013022	Consolidated Incorporated of Orlando.
004536	Constable & Madison Inc.
010360	Conterm AB.
014223	Continental Express International, Inc.
009556	Contrak Forwarding Company.
004561	Corrigan Moving and Storage Co.
011369	Cruz, Adalberto Jesus.
013350	D. Lee Krause & Company, Ltd.
012783	Da-Ma's Forwarding, Inc.
012914	Dartrans Limited.
014180	Def Limited.
011002	Demetrios Air Freight Company, Inc.
004729	Demopoulos, Seraphim Steven.
014121	Deniz Nakliyati T.A.S.
004931	Dependable Freight Forwarding, Inc.
013804	Deugro Ocean Transport, Inc.
014403	Deugro Projects USA, Llc.
009677	Deutsche NAH–OST Linien GMBH & Co. KG.
012394	DFDS Transport Inc.
014279	Diaz, Jose Gregorio.
004674	Diaz, Richard.
013674	Dimerc USA, Inc.
005338	Dimerco Express (USA) Corp.
005379	Din, Akhtar, L. Kim.
013784	Dollar America Exchange, Inc.
007962	Dolphin Brokerage International Inc.
013890	Dolphin Int'l Transportation Co., Ltd.
006900	Duchess Shipping, Inc.
004764	Dulles International Customhouse Brokerage Corp.
013548	Dynasty Customs Broker Inc.
004660	E. C. McAfee Co. Customhouse Brokers.
013135	E.R.A. Freight Forwarding Inc.
004763	Eagle International, Ltd.
012055	Eastern-Trans (U.S.A.) Inc.
010924	Echlin Sales Company, The.
005471	Edward J. Zarach & Associates, Inc.
014306	EFES Cargo U.S.A., Inc.
014117	EMC Shipping, Inc.
004782	Erting, Jorgen A.
013328	ESL Express, Inc.
013808	ETA Import & Export Ltd.
009316	Eurasia Express Co., Ltd.
010742	European Shipping Transport (E.S.T.) B.V.
013043	Everich Shipping Ltd.
012110	Executive Freight Consolidators, Inc.
014169	Expedited Transportation Services Inc.
007361	Express Packing & Forwarding, Inc.
013001	F.P. International Corporation.
007086	Fairway Express, Inc.
005060	Fast Air Sea Transport, Inc.
008607	Fast Cargo U.S., (L.A.), Inc.
014229	Fast Transportation Services, Inc.
004512	Federal Warehouse Company.
009876	Fiorino Shipping S.R.L.
005657	Florida Overseas Services, Inc.
011469	Frama Forwarding Corp.
009928	Freight Forwarders Inc.
012196	Frontier Container Line, Inc.
010937	Frontier International Shipping Company, Inc.
010450	Galaxy Freight Service Ltd.
004618	Gatell International, Inc.
004446	Gateway Agency, Inc.
006441	General Brokerage Services Inc.
006443	General Express Management Corp.
007984	General Ocean Freight Container Line.
004321	General Shipping Co Inc.
004661	Glen Ellyn Storage Corporation.
013396	Global Forwarding Ltd.
013005	Global-Link Resources, Inc.

Org. No.	
012334	GLSL Shipping & Chartering GMBH.
005879	GobNait Container Line.
000445	Golden Gate Container Line, Inc.
012179	Goldmar Cargo, Inc.
012543	Graebel/Houston Movers, Inc.
006783	Great Abaco Shipping Co., Ltd.
013214	Great Way Trading & Transportation, Inc.
013826	GSG Investment Inc.
013852	Gulf & Orient Steamship Co.
010633	Hanshin Air Cargo USA Inc.
004078	Haras and Co., Inc.
012293	Hawthorne, Dennis.
010218	HC Hansa Cargo Transport GMBH.
008783	Helka Express International Ltd.
002222	Hercules Packing, Shipping & Moving Co. Inc.
006473	Hernandez, Jorge M.
010968	Hero Shipping Co., Ltd.
004230	Hirshbach & Smith, Inc.
008791	Hol-Mar International, Inc.
013855	Houng, Tina.
012522	Hudson Int'l Transport (Taiwan) Corp.
013582	Huo, Shu-Liang.
005504	Hydra Management, Inc.
011463	I.C.C. Products Inc.
005300	Import Brokers, Inc.
011047	Innovative Logistics Incorporated.
014114	Inter-Jet Ocean Transport, Inc.
011115	Intercontinental Cargo Express, Ltd.
013046	Intergroup Shipping (Asia) Ltd.
011950	Intermodal Logistics Systems, Inc.
012801	International Express Cargo Services, Inc.
013168	International Express Consolidators Co.
014016	International Logistics, Inc.
013976	International Ocean-Air Services, Inc.
012006	Intertraffic-Tfi Pty. Ltd.
004120	Intlcobal Inc.
013120	Intransit Services, Inc.
010682	Ireland, David L.
011951	Island Cargo Consolidators, Inc.
011274	Island Shipping and Trading, Ltd.
004426	J.D. Smith Co., Inc.
004364	J.R. Michels, Incorporated
004755	J.T. Scura, Incorporated
006466	Jackie International Corp.
005460	Janel Group of Los Angeles, Inc., The.
013333	Jaro International L.L.C.
009776	Jewett-Cameron Lumber Corporation.
014322	Johnson Storage & Moving Co.
005560	Johnson, Jean H.
013246	Joint Cargo Movements, Inc.
004680	Jones, Richard L.
004872	Jorge Blanch, Inc.
004212	Joseph C. Murray & Co., Inc.
010550	Jumbo Protectors Ltd.
014130	K-Pasa, Inc.
013745	Kahng, Heywal Soo.
011316	KC International Inc.
012635	KCTC International Ltd.
005464	Kim, Young S.
007592	Kirk Freight Line Ltd.
011677	KNL International, Inc.
013794	Koberg, Manfred J.
013881	Koerber, Wesley S.
012999	Kollyns International Co., Ltd.
011226	Koninklijke Frans Maas Groep N.V.
010192	Kunyoung Shipping Co., Ltd.
001585	La Flor de Mayo Express, Inc.
005039	La-Rama Shipping Company, Inc.
007045	Laparkan Trading Limited.
012876	Latino S.A.
013910	Lead Young Sea & Air Freight Co., Limited.
013376	Leo Transport Corporation Ltd.
004912	Levine, Michael.
009340	Logistics Service (HK) Co., Ltd.

Org. No.	
011037	Long Transportation Services, Inc.
006633	Loor International Forwarders, Inc.
004562	M & H Brokerage, Inc.
010420	M&M Militzer & Munch GMBH Internationale Spedition.
002550	M.A.T. International Shipping, Inc.
009840	Mac-Nels Agencies PTE Ltd.
004917	Mahoney, John F.
004116	Manriquez, Honorato and Manriquez, Rachelle.
010361	Mapcargo International.
005305	Marshall, Robert Gage.
005528	Martinez, Miriam.
013085	Maverick Distribution Services Inc.
007003	Mazzarella, Al.
004124	Mc Carty, John T.
012129	Med-Pacific Express.
011005	Medina-Luque, Carlos G.
013617	Megatrans International Inc.
013984	Meler, Fleura.
006489	Meteor Air Freight Inc.
004685	Metro Worldwide Shipping Inc.
010395	Metzger Und Richner Transport AG.
004421	Middleton Group, Inc.
013066	Mina-Saito, Josephine D.
009839	Montemar S.A.
004796	Monti Forwarding Corp.
004713	Montiel, Omar.
012788	Moon, Myung Ku.
005558	Morgan Systems International, Inc.
010515	Multicargo S.R.L.
011326	Multimodal Services (NY) Inc.
014342	Mundo Shipping Corp.
011010	Munoz, Margaret V.
014252	Murphy Shipping & Commercial Services, Inc.
012875	Naimoli, Anthony.
001511	Naviera Consolidada S.A.
011112	Network Trading, Corp.
012233	New Bight Enterprise Limited.
010584	New Zealand Van Lines Ltd.
014240	NG Enterprises, Inc.
011114	Nippon Express Hawaii, Inc.
013473	Nishida, Guy Timothy.
012757	Ocean Conco Line, Inc.
011481	Oceanic Freights, Inc.
010713	Oceantower Forwarder Service Inc.
012158	Oceanwide Shipping Inc.
009620	Omega & Associates, Inc.
012399	Otim-Organizzazione Trasporti Internazionali E Marittimi S.P.A.
013974	Overseas Mahanm Inc.
013556	P.I. Express, Inc.
013506	Pacific Direct Line Ltd.
013559	Packer, Matt.
011029	Pagoda Container Line Corp.
013690	Park, Insoo.
006435	Parkerco, Inc.
013086	Partec Forwarding Corporation.
009949	Pasha Terminal Company, Inc.
005606	Pegasus (N.Y.) Inc.
009527	Penbroke Marine Services, Inc.
013888	Perform' Air International Inc.
004939	Perryman, Mojonier Company.
013767	Petcon Container Lines Ltd.
004505	Phil Thomas & Son International Co.
013949	Phoenix Caribbean Shipping Line (USA) Ltd.
005021	Pike Shipping Company, Inc.
013831	Pilot Air Freight Corp.
013166	Pioneer General, Inc.
005503	PLI, Inc.
004801	Posey International, Inc.
011596	Princess Forwarding, Inc.
013522	Pro-Well Sea Consolidators & Forwarding Ltd.
013536	Procargo Inc.
005372	Projects Transportation International, Ltd.
013589	Promate Freight Service, Inc.
013565	Quality Logistics, Inc.

Org. No.	
013903	Quantum International Forwarding Ltd.
013721	Quartet International
014085	Quick Cargo Services Corp.
013362	R & F Rolap Enterprises, Inc.
002503	R. A. Leslie & Company, Inc.
005436	R. E. Delgado, Inc.
005294	Ram's Cargo Brokers, Inc.
002520	Rank International Forwarding, Inc.
011318	Red Oak Industries, Inc.
014360	Reliable Van & Storage Co., Inc.
012923	Respond Cargo Services Corporation.
006730	Rhein Express International Ltd.
004131	Richard Murray & Company.
006476	Riggs, Kathleen Tansey.
004786	Ripple, Harvey E.
011003	Robert J. Semany & Co.
004752	Robertson Forwarding Co., Inc.
006509	Rock-It Cargo USA, Inc.
014218	Rodi International Corp.
004969	Rome International Freight Consultants, Inc.
005246	Ross Freight Company, Inc.
010187	Royal Cargo Corporation.
013793	RSB Logistic Services Inc.
006467	Rutherford International Group Ltd.
014146	S O S Global Express, Inc.
006018	S.T.S. International Inc.
004437	Sack and Menendez, Inc.
013264	Saco Shipping GMBH.
010545	Safco International Freight Corp.
011547	Safe Ocean Forwarders, Inc.
009932	Sagawa World Express, Inc.
004111	Salben Shipping Company, Inc.
007950	Samonte, Ramon A.
010732	Samson Transport Company (UK) Ltd.
007000	San Diego, Danilo P.
013604	Sanchez, Carlos B.
006515	Satcorp Shipping Inc.
014541	Satt International Forwarding Inc.
009688	SBA Consolidators, Inc.
001083	Scanfreight Continental N.V.
004578	Schick Moving & Storage Company.
005645	Schneider, Richard.
012577	SCN Container Line, Inc.
013499	SCR International Freight Forwarding, Inc.
014063	Sea & Air Transport, Inc.
006517	Sea To Sea Foreign Freight Forwarder Inc.
008300	Sea-Span Shipping, Ltd.
010860	Seair Export Import Services, Inc.
011981	Seatop Shipping Ltd.
008933	Seaway International, Inc.
011015	Sec Line Ltd.
013872	Seiwa America, Inc.
010921	Senko Co., Ltd.
004878	Sequoia Forwarders Co.
006645	Servco California, Inc.
001133	Sesko Marine Trailers, Inc.
011135	Shannon International, Inc.
004687	Shenk, David W.
013175	Shippers, Inc.
013635	Siemens, III, William J.
012808	Simmons International Express, Inc.
014004	Simpson, Duane D.
012256	Single Source Transportation, Inc.
009494	Smith, Virginia A.
012011	Sofrana Holding Limited.
013281	Solano, Paula.
006522	Solmar Logistics Inc.
004953	Soto, Alfonso X.
004323	Southern Steamship Agency, Inc.
013137	Southern World International, Inc.
012969	Special Commodities Services, L.L.C.
013583	Spencer, Eldon D.
010931	Stalco Forwarding Services, Inc.
010474	Stallion Cargo Inc.

Org. No.	
014226	Stallion Freight U.S.A. LLC.
012462	Star Trans-Pacific International Forwarding Co. Ltd.
004375	Stevens Shipping & Terminal Company.
006525	Stewart Corporation.
001203	Sunmar Shipping, Inc.
013929	Sunrise American Shipping, Corp.
011185	Sunshine Freight Forwarders, Inc.
013646	Super Bridge Shipping Limited.
011517	Super Cargo International Services, Inc.
013557	Superior Shipping, Inc.
004253	T.A. Coleman & Co., Inc.
013627	Tampa Bay Ocean Services, Inc.
014020	Tan, Gary Yenkok.
014213	Terrace Express, Inc.
013661	Thienvanich, Lersvidhya.
004347	Thomas E. Flynn and Co.
012789	Thomas Griffin International, Inc.
013320	Thor Air Freight Corp.
013393	Time Definite Services, Inc.
013423	Todd, Richard.
006867	Total Ex-Port of Florida, Inc.
004016	Total Ex-Port, Inc.
005398	Trade Winds Forwarding, Inc.
012588	Trans Arabian Shipping Co. Inc.
007388	Trans Continental Cargo, Inc.
012276	Trans-Freight Inc.
013195	Trans-Global Expeditors Forwarding, Inc.
009963	Trans-Hemisphere Shipping Services, Corporation.
011628	Transbridge International, Inc.
010857	Transnation Freight Services, Inc.
011001	Transpo Service, Ltd.
014363	Transport & Freight Forwarding International Co., Ltd.
013573	Transporte Dos Rios de Navegacion, C.A.
013174	Transway International Co., Ltd.
002768	Transworld Lines, Inc.
014392	Transworld Shipping Ltd.
012149	Trapaga-Torres, Gloria Veronica.
013115	Treset Corporation.
013841	Trimex International Ltd.
011382	Trutainer N.V.
012909	U.S. Cargo, Inc.
014281	U.S. International Forwarding Agency, Inc.
004930	U.S.A. Shipping Corporation.
007474	U.S.A. Tecmarine, Inc.
014286	Unimar Maritime Limited.
014416	Union International America, Inc.
013052	Unishipping.
008833	United Abaco Shipping Company Limited.
012781	United States Auto & Cargo Exporters Corp.
012895	United Trans-Trade Inc.
014139	Universal Logistic Forwarding Co., Ltd.
005452	Uryu, Takashi.
013309	V N Cargo, Inc.
006539	Valencia Shipping Agencies Inc.
012440	Van Esch Trading and Shipping B.V.
012424	Venconav USA Ltd.
013789	Venezuela, Republica de—Ministerio de la Defensa—Armada.
011585	Vialoma Trading Corp.
013930	Victoria Line, Inc.
005341	Viking Sea Freight Inc.
011453	Vil International, Inc.
011152	Vin-Shinyei (China) Limited.
013880	VIP Transport, Inc.
013968	Voit, Timothy Allan.
006178	Wada, Hiroyuki.
012177	Weimer, Alex G.
009330	Welgrow International, Inc.
011007	Welgrow Ocean Transportation, Inc.
004106	Westfeldt Brothers Forwarders, Inc.
004888	Westwind Overseas Limited.
013613	Wilson Freight (Far East) Limited.
014119	Winfield Shipping Inc.
013229	Winfull Transportation Co., Ltd.
008229	Winsor Grain, Inc.

Org. No.	
009362	Wisco International Forwarders, Inc.
005505	Withers Transfer & Storage of Coral Gables Inc.
013129	World Cargo Corporation.
004544	World Freight Forwarders, Inc.
009601	Worldwide Exhibition Services, Inc.
013496	Worldwide Freight Systems, Inc.
012899	Wren, Lori Ann.
013487	Wright Kerr Tyson Limited.
009339	Yamato Transport (HK) Ltd.
013822	Yamato Transport (S) PTE Ltd.
009346	YK Shipping International (USA), Inc.
009889	Youngs Consolidators Ltd.
006552	Yowell Transportation Services, Inc.
009709	Zonn Agency.

[FR Doc. 97–32116 Filed 12–8–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System
ACTION: Notice

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimates of the burden of the proposed information collections, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 9, 1998.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed forms and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the implementation of the following reports:

1. Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity
Agency form number: FR 3036
OMB control number: 7100-0288
Frequency: one-time survey
Reporters: The proposed survey has three parts: a pre-survey questionnaire, a turnover survey, and a survey of outstanding derivatives contracts. The pre-survey questionnaire and the turnover portion of the survey would include all financial institutions that are significant dealers in the foreign exchange market in the United States. The derivatives outstanding portion of the survey would cover a smaller set of firms because market making in derivatives markets is more concentrated.
Annual reporting hours: 8,187
Estimated average hours per response: Pre-survey questionnaire: 5 minutes; Turnover survey: 50 hours; Derivatives outstanding survey: 15 hours for FR 2436 respondents (there are proposed to be thirteen), 60 hours for others
Number of respondents: Pre-survey questionnaire and turnover survey: 144; Derivatives outstanding survey: 26.Small businesses are not affected.

General description of report: This information collection would be voluntary (12 U.S.C. 248(a)(2), 353-359, and 3105(c)) and would be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The proposed Central Bank Survey of Foreign Exchange and Derivatives Market Activity is part of an ongoing triennial series. The data from the survey would provide information about the size and structure of the global markets for foreign exchange and financial derivatives transactions. The Federal Reserve would be one of forty-four central banks conducting surveys. Aggregate results from each central bank's survey will be provided to the Bank for International Settlements, which will compile global market statistics. The proposed survey would be conducted in April and June of 1998 by the Federal Reserve Bank of New York.

The proposed survey has two parts, a turnover survey and a survey of outstanding derivatives contracts. The proposed changes from the 1995 survey are intended to reduce the reporting burden. The most significant revisions are those made to the derivatives outstandings part of the survey to align it with the Semiannual Report of Derivatives Activity (FR 2436) which is discussed below.

2. Report title: Semiannual Report of Derivatives Activity
Agency form number: FR 2436
OMB control number: 7100-0284
Frequency: semiannual
Reporters: large U.S. dealers of over-the-counter (OTC) derivatives
Annual reporting hours: 2,600
Estimated average hours per response: 100
Number of respondents: 13
Small businesses are not affected.

General description of report: This information collection would be voluntary (12 U.S.C. 248(a), 353-359, and 461) and would be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2436 is proposed to collect derivatives market statistics from a sample of thirteen large U.S. dealers of OTC derivatives. The report would collect information on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity- and commodity-linked over-the-counter derivatives instruments across a range of underlying currencies, interest rates, and equity markets.

This collection of information would complement the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036) and would be implemented concurrently with the 1998 FR 3036. The FR 2436 would collect similar data on the outstanding volume of derivatives, but not on derivatives turnover. As with the FR 3036, the Federal Reserve would conduct this report in coordination with other central banks and would forward the aggregated data furnished by U.S. reporters to the Bank for International Settlements, which would publish global market statistics that are aggregations of national data.

Board of Governors of the Federal Reserve System, December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32157 Filed 12–8–97; 8:45AM]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y
Agency form number: none
OMB Control number: 7100-0250
Frequency: on occasion
Reporters: state member banks and bank holding company (BHC) subsidiaries
Annual reporting hours: 61,220 (27,940 for state member banks and 33,280 for BHC subsidiaries
Estimated average hours per response: .25
Number of respondents: 2,040 (1,016 state member banks and 1,024 BHC subsidiaries)
Small businesses are affected.

General description of report: This recordkeeping is mandatory (U.S.C. Sections 3310, 3331-3351). Since the Federal Reserve does not collect this information, confidentiality under the Freedom of Information Act (FOIA) is generally not at issue. The issue of the confidentiality of the information, however, might arise if the Federal Reserve were to obtain a copy of the appraisal during an examination or inspection. In such a case, the documents would be exempt (5 U.S.C. 552(b)(8)). The information also would be exempt if disclosure would likely cause substantial harm to the institution from which it was obtained (5 U.S.C. 552(b)(4)).

Abstract: This information collection is a recordkeeping requirement contained in the Board's Regulation H (12 C.F.R. 208.18) and Regulation Y (12 C.F.R. 225.61) that implements Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The purpose of the statute is to provide that federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals used in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Federal Deposit Insurance Corporation, the Office of the Controller of the Currency, and the Office of Thrift Supervision have parallel requirements for the institutions they supervise.

Board of Governors of the Federal Reserve System, December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32158 Filed 12–8–97; 8:45AM]

Billing Code 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of public hearing on December 18.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Thursday, December 18, 1997 from 1:00 P.M. to 4:00 P.M. in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The purpose of the hearing is to hear testimony from interested parties on Accounting for Internal Use Software. Those interested in testifying should contact Wendy Comes, Executive Director, no later than one week prior to the hearing. Also, they should at the same time provide a short biography and written copies of their testimony.

Any interested person may attend the hearing as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy M. Comes, Executive Staff Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7357. E-Mail to: ComesW.fasab@gao.gov. Fax: 202–512–7366.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: December 3, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–32191 Filed 12–8–97; 8:45 am]

BILLING CODE 1610–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of December meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Friday, December 19, 1997, from 9 a.m. to 4 p.m. in Room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss the following issues: (1) Natural Resources; (2) Credit Reform proposed amendments; (3) Social Insurance; (4) follow-up issues from the public hearing on accounting for internal use software of December 18; and (5) the addition of new projects for 1998.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: December 3, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–32192 Filed 12–8–97; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0496]

Agency Emergency Processing Request Under OMB Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The purpose of the proposed collection of information is to enable FDA to comply in a timely manner with the congressional mandate in section 504 of the Federal Food Drug and Cosmetic Act (the act) as added by the Animal Drug Availability Act (ADAA) of 1996, which requires that distributors of animal feeds containing a veterinary feed directive (VFD) drug notify FDA of their intent to engage in distribution. FDA is requesting OMB approval within 10 days of receipt of this clearance submission.

DATES: Submit written comments by December 19, 1997.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA and 5 CFR 1320.13 because the information is needed so that FDA can process letters from animal feed distributors notifying the agency of their intent to distribute animal feeds containing VFD drugs as mandated by the ADAA.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Newley added section 504 of the act (21 U.S.C. 354) created a new class of drugs for use in animal feed, referred to as VFD drugs, which are limited to use only under the professional supervision of a licensed veterinarian. Under section 504(a)(3)(C) (21 U.S.C. 354(a)(3)(C)), a distributor must upon first engaging in the distribution of animal feeds containing VFD drugs notify the agency of its name and place of business. The information the agency needs to implement this statutory requirement includes the following specific information: Distributor name, site street address, mailing address (if different), city state, zip code, name and title of individual submitting the letter, the date signed, and a statement acknowledging the intent to distribute. The information will be used as confirmation of distributors for this new class of drugs. To date, FDA has received letters from approximately 500 distributors. FDA is working diligently to implement procedural regulations for VFD drugs. Thus, approval of this request by OMB will allow FDA to obtain the information that distributors must provide under section 504(a)(3)(C) as well as provide the agency with a listing of distributors legally authorized to distribute animal feeds containing VFD drugs.

Respondents to this collection of information are animal feed and animal drug distributors. FDA estimates the

burden of the proposed collection of information is as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
354(a)(3)(C)	20,000	1	1 (initial only)	.25	5,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate for this proposed burden was derived from agency records and past experience concerning animal feed distribution.

Dated: December 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32163 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0499]

ALLERGAN Medical Optics; Premarket Approval of Model SA40N AMO®ARRAY® Multifocal Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Medical Optics, Irvine, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Model SA40N AMO®Array® Multifocal Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 5, 1997, of the approval of the application.

DATES: Petitions for administrative review by January 8, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ashley A. Boulware, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION: On September 3, 1996, Allergan Medical Optics, Irvine, CA 92612–9534, submitted to CDRH an application for premarket approval of Model SA40N AMO®Array® Multifocal Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens. The device is a multifocal intraocular lens and is indicated for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed and who may benefit from useful near vision without reading add and increased spectacle independence across a range of distances where the potential visual effects associated with multifocality are acceptable. The lens is intended for placement in the capsular bag. The lens is available in powers of +16 to +24 diopters.

On July 10, 1997, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 5, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 8, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health

[FR Doc. 97–32165 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 1998

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for Fiscal Year (FY) 1998. The Prescription Drug User Fee Act of 1992 (the PDUFA), as amended by the Food and Drug Administration Modernization Act of 1997 (the FDAMA), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Fees for applications for FY 1998 were set by the FDAMA, subject to adjustment for inflation. Total application fee revenues fluctuate with FDA application review workload. Fees for establishments and products are based on the revenues to be derived from applications.

FOR FURTHER INFORMATION CONTACT: Michael E. Roosevelt, Office of Financial Management (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5088.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Pub. L. 102–571), as amended by the FDAMA (Pub. L. 105–115), establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biologic products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)). Under the PDUFA, as amended, one-third of the total user fee revenue for each FY must come from each of the three types of fees.

For 1998 through 2002, under the amendments enacted in the FDAMA, the total fee revenues and fee rates for application fees are set in the statute, but are to be adjusted annually for cumulative inflation since 1997. In addition, total application fee revenues are structured to increase or decrease each year as the number of applications submitted to FDA increases or decreases.

For 1998 through 2002, FDA is authorized to set fee rates for establishment and for product categories each year, so that the total fee revenue from each of these two categories will equal the total revenue FDA expects to collect from application fees that year. This procedure continues the arrangement under which one-third of the total user fee revenue comes from each of the three types of fees.

This notice establishes fee rates for FY 1998 for application, establishment, and product fees. These fees are retroactive to October 1, 1997, and will remain in effect through September 30, 1998. Prior to the enactment of the FDAMA, only half of the application fee was due upon submission of the application, and the second half was due when FDA issued an action letter after review of the application. Beginning in FY 1998, the entire application fee is due upon submission of the application to FDA. For fees already paid on applications and supplements submitted on or after October 1, 1997, FDA will bill applicants for the difference between fees paid and fees due under the new fee schedules and under the new requirement that application fees be paid in full at the time an application is submitted. For applications and supplements submitted after December 31, 1997, the new fee schedule must be used. Invoices for establishment and product fees for FY 1998 will be issued in December 1997, using the new fee schedules.

II. Inflation and Workload Adjustment Process

The PDUFA, as amended by the FDAMA, provides that fee rates for each FY shall be adjusted by notice in the **Federal Register**. The adjustment must reflect the greater of : (1) The total percentage change that occurred during the preceding FY in the Consumer Price Index (the CPI) (all items; U.S. city average), or (2) the total percentage pay change for that FY for Federal employees, as adjusted for any locality-based payment applicable to employees stationed in the District of Columbia. The FDAMA provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)).

The FDAMA also structures the total application fee revenue to increase or decrease each year as the number of applications submitted to FDA increases or decreases. This provision allows revenues to rise or fall as FDA's workload rises or falls. To implement this provision each year, FDA will estimate the number of applications it anticipates receiving, based on its actual receipts the previous year, and making an allowance for waivers and refunds. FDA has made similar estimates each year since 1993 under the PDUFA fee setting process. The number of applications estimated by this process will then be multiplied by the inflation-adjusted statutory application fee. This calculation will produce the FDA's estimate of total application fee revenues to be received each year.

The PDUFA also provides that FDA shall adjust the rates for establishment and product fees so that the total revenues from each of these categories will be equal to the revenues FDA expects to collect from application fees that year. The PDUFA, as amended, provides that the new fee rates based on these calculations be published within 60 days after the end of each FY (21 U.S.C. 379h(c)(2)).

III. Inflation and Workload Adjustment for Application Fees and Total Application Fee Revenue

The FDAMA provides that the application fee rates set out in the statute be adjusted each year for cumulative inflation. It also provides for total application fee revenues to increase or decrease, based on increases or decreases in FDA's application review workload.

A. Inflation Adjustment to Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data on safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A), and 379(h)(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fees described above are set out in the FDAMA for 1998 ($250,704 for applications requiring clinical data, and $125,352 for applications not requiring clinical data or supplements requiring clinical data) (21 U.S.C. 379h(b)(1)), but must be adjusted for inflation. For FY 1997, the total increase in the CPI was 2.15 percent, whereas the increase in applicable Federal salaries for FY 1998 is 2.45 percent. The higher of these, 2.45 percent, is to be used for computing the inflation adjustment for FY 1998. Since

1998 is the first year after 1997, the base year from which inflation accumulates and is compounded, there is no cumulative, compounded inflation from previous years to be added to this percentage for FY 1998. The adjusted application fee rates are computed by applying the inflation percentage for FY 1998 (102.45 percent) to the FY 1998 statutory application fee rates stated above. For FY 1998 the adjusted application fee rates are $256,846 for applications requiring clinical data, and $128,423 for applications not requiring clinical data or supplements requiring clinical data. These amounts must be submitted with all applications during FY 1998.

B. Workload Adjustment and Total Application Fee Revenue

Total application fee revenues for 1998 will be determined by the number of applications FDA receives from October 1, 1997, through September 30, 1998, multiplied by the fee rates calculated in the preceding paragraph. Before fees can be set for establishment and product fee categories, each of which are to equal total revenues FDA collects from application fees, FDA must estimate its total 1998 application fee revenues. To do this, FDA calculates the number of full application fees FDA received in 1997 and uses that figure as a basis for estimating 1998 application volume.

For FY 1997, FDA received, filed, and assessed fees for 118 applications that require clinical data, 19 applications that did not require clinical data, and 127 supplements that require clinical data. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee, the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by 2. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications subject to full application fees.

In addition, as of September 30, 1997, FDA assessed fees for one application that required clinical data, one application that did not require clinical data, and one supplement, all of which were refused filing or withdrawn before filing. After refunds, the full application paid one-fourth the full application fee and is counted as one-fourth of an application, and the application that did not require clinical data and the supplement each paid one-eighth of the full application fee and are each counted as one-eighth of an application.

Using this methodology, the approximate equivalent number of applications that required clinical data and were assessed fees in FY 1997 was 192, before any further decisions were made on requests for waivers or reductions. Under the FDAMA small businesses will receive a full waiver for their first application (rather than waiver of half the fee as was the case under the PDUFA). In addition, the FDAMA excludes from fees bulk biological products that are further manufactured, and provides new exceptions for certain orphan product applications and certain supplements for pediatric indications. Because of these changes, in FY 1998 FDA estimates that approximately 40 fewer equivalents of full applications will generate fees, or fees for them will be subject to waivers or reductions. This number is a substantial increase over the estimate that FDA would waive or reduce 16 equivalents of full fee applications made 1 year ago when fees for 1997 were established. Therefore, FDA estimates that approximately 152 equivalent applications that require clinical data will qualify for fees in FY 1998, after allowing for possible waivers or reductions.

The following calculations summarize the determination of FY 1998 application estimates, based on 1997 data:

• 118 applications that require clinical data, + (19÷2) applications that do not require clinical data, + (127÷2) supplements that require clinical data, + (1÷4) applications that require clinical data and which FDA refuses to file or the sponsor withdraws before filing + (2÷8) supplements which FDA refuses to file or the sponsor withdraws before filing minus 40 waivers, reductions or exceptions = 152 (the estimated number of ''full fee'' applications for FY 1998 based on FY 1997 experience, and rounded up).

The total FY 1998 application fee revenue is estimated by multiplying the adjusted application fee rate ($256,846) by the equivalent number of applications projected to qualify for fees in FY 1998 (152), for a total estimated application fee revenue in 1998 of $39,040,592. This is the amount of revenue that FDA is also expected to derive from establishment fees and from product fees.

IV. Fee Calculations for Establishment, and Product Fees

A. Establishment Fees

The FY 1997 establishment fee was based on an estimate of 250 establishments subject to fees. In FY 1997, 263 establishments qualified for fees before any decisions on requests for waivers or reductions were made. Under the FDAMA, the basis for assessment of establishment fees is amended. The responsibility for the fee is placed on the applicant whose product is manufactured at the facility, and not on the owner of the facility. Contract manufacturing establishments will now be subject to fees, to be paid by the applicant whose product is manufactured at that establishment. FDA believes this will subject additional establishments to fees, and estimates that approximately 275 establishments will qualify for fees in FY 1998 after allowing for possible waivers or reductions. Thus, the number 275 is used in setting the new establishment fee rate. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($39,040,592), by the estimated 275 establishments, for an establishment fee rate for FY 1998 of $141,966 (rounded to the nearest dollar).

B. Product Fees

The FY 1997 product fee was based on an estimate that 2,200 products would be subject to product fees in FY 1997. For FY 1997, 2,267 products qualified for fees before any decisions on requests for waivers or reductions were made. FDA estimates that only 2,100 products will qualify for product fees in FY 1998, after allowing for the fact that about 140 antibiotic products and 11 products manufactured by state governments that paid fees in 1997 will no longer be subject to fees in 1998 under the FDAMA, and for the fact that an additional 17 large volume parenteral products that were subject to fees in 1997 are now regulated as generic drugs and will not be subject to fees in 1998. Accordingly, the FY 1998 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($39,040,592) by the estimated 2,100 products for a product fee rate of $18,591 (rounded to the nearest dollar).

V. Adjusted Fee Schedules for FY 1998

The fee rates for FY 1998 are set out in the following table:

Fee category	Fee rates for FY 1997
Applications	
Requiring clinical data	$256,846
Not requiring clinical data	$128,423

Fee category	Fee rates for FY 1997
Supplements requiring clinical data	$128,423
Establishments	$141,966
Products	$18,591

VI. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA that is submitted after December 31, 1997, must be accompanied by the appropriate application fee established in the new fee schedule. FDA will bill applicants who submitted application fees between October 1, 1997, and December 31, 1997, based on the adjusted rate schedule.

B. Establishment and Product Fees

By December 31, 1997, FDA will issue invoices for establishments and product fees for FY 1998 under the new fee schedules. Payment will be due by January 31, 1998. FDA will issue invoices in October 1998 for any products and establishments subject to fees for FY 1998 that qualify for fees after the December 1997 billing.

Dated: December 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32164 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0151]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Applications for Exemption from Preemptions of Medical Device Requirements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1997 (62 FR 27059), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0129. The approval expires on July 31, 2000.

Dated: December 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32166 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0266]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Administrative Detention and Banned Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1997 (62 FR 38095), the agency announced that the proposed information 3collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0114. The approval expires on September 30, 2000.

Dated: November 30, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32167 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–484]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection without change; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations 42 CFR 410.38 and 42 CFR 424.5; *Form Number:* HCFA–484 (OMB approval #0938–0534); *Use:* To determine oxygen is reasonable and necessary pursuant to Medicare Statute, Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) and:

1. Results and date of the most recent arterial blood gas PO_2 and/or oxygen saturation tests.

2. The most recent arterial blood gas PO_2 and/or oxygen saturation test performed EITHER with the patient in a chronic stable state as an outpatient, OR

within two days prior to discharge from an inpatient facility to home.

3. The most recent arterial blood gas PO_2 and/or oxygen saturation test performed at rest, during exercise, or during sleep.

4. Name and address of the physician/provider performing the most recent arterial blood gas PO_2 and/or oxygen saturation test.

5. If ordering portable oxygen, information regarding the patient's mobility within the home.

6. Identification of the highest oxygen flow rate (in liters per minute) prescribed.

7. If the prescribed liters per minute (LPM), as identified in item 6, are greater than 4 LPM, provide the results and date of the most recent arterial blood gas PO_2 and/or oxygen saturation test taken on 4 LPM.

If the PO_2 = 56–59, or the oxygen saturation = 89%, then evidence of the beneficiary meeting at least one of the following criteria must be provided.

8. The patient having dependent edema due to congestive heart failure.

9. The patient having cor pulmonale or pulmonary hypertension, as documented by P pulmonale on an EKG or by an echocardiogram, gated blood pool scan or direct pulmonary artery pressure measurement.

10. The patient having a hematocrit greater than 56%.

Form HCFA–484 obtains all pertinent information and promotes national consistency in coverage determinations; *Frequency:* Other (as needed); *Affected Public:* Individuals/households, business or other for profit, and not for profit institutions; *Number of Respondents:* 300,000; *Total Annual Responses:* 300,000; *Total Annual Hours Requested:* 50,000.

To obtain copies of the supporting statement, and any related forms referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 2, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–32100 Filed 12–8–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of National Cancer Institute Director's Consumer Liaison Group Meeting

Notice is hereby given that the National Cancer Institute will hold its first public meeting of the Director's Consumer Liaison Group, beginning at 9:00 a.m. on December 17, 1997 and ending at 3:00 p.m. on December 18, 1997 at the Pooks Hill Marriott, Bethesda, MD. Seating is limited and will be on a first-come, first-served basis.

The National Cancer Institute (NCI), the federal government's primary agency for cancer research, is bringing together fifteen (15) consumer-advocates to create a two-way street that enables them to interact directly with the scientific community at NCI on a wide range of programs and issues. The 15-member DCLG is made up of people involved in cancer advocacy and who reflect the breadth and diversity among those whose lives are touched by cancer. The DCLG will also help NCI to widen the pool of qualified consumer-advocates who can be called upon to serve on NCI advisory committees and other groups.

The members are (in alphabetical order):

Paula E. *Bowen*, Brooklyn, N.Y.
Susan Lowell *Butler*, Alexandria, Va.
Manuel H. *Castillo*, Dayton, Ohio
Kerry J. *Dewey*, Missoula, Mont.
M. Venus *Gines*, Lithonia, Ga.
Felicia Schanche *Hodge*, Berkeley, Calif.
Michael *Katz*, New York, N.Y.
Susan A. *Leigh*, Tucson, Ariz.
Ruth Chiang *Lin*, Short Hills, N.J.
Gena H. *Love*, Albuquerque, N.M.
Susan *McCarthy*, Vancouver, Wash.
Daniel M. *Moore*, Jr., Decatur, Ill.
Lillouise *Rogers*, Chicago, Ill.
Susan K. *Stewart*, Highland Park, Ill.
Brad *Zebrack*, Ann Arbor, Mich.

The majority of the newly appointed DCLG members are cancer survivors, but family members of cancer patients and health professionals involved in cancer advocacy are represented. The cancer experience of the group includes prostate, breast, kidney, ovarian, cervical, lung, bladder, and brain cancer, Hodgkin's disease, leukemia, sarcoma, and myeloma. The group represents Asian American, Native American, Hispanic, African American, and non-Hispanic white persons, the young and old, men and women, the medically underserved, and people from all geographic areas of the country, both rural and urban. The constituencies represented by the members include advocacy organizations that represent both specific cancers and all cancers. DCLG members will serve three-year terms. The three-fold purpose of the DCLG will be to:

- Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of NCI program and research priorities.
- Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of NCI program and policy advisory committees.
- Establish and maintain strong collaborations between NCI and the cancer advocacy community.

One purpose of this first meeting is to decide how the group will do its work. For example, how it will select a chair and identify members who will serve in the future. The DCLG will also discuss how it will communicate internally and with the broad advocacy community it represents. In addition, the group will begin discussion on several key issues for the Institute. The most pressing issues faced by cancer patients today, as described in the candidates' applications, include: Access to and availability of reliable cancer information; access to effective, high-quality treatment, including clinical trials; increased rehabilitation, psychosocial support, and other survivor concerns; and participation in setting research priorities. NCI may also begin issues to the attention of the group.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Elaine C. Lee, in the Office of Liaison Activities, National Cancer Institute, Building 31, Room 10A06; or by calling telephone No. 301 594–3194 or sending a fax to 301 480–7558. For additional information, contact Ms. Lee at the above address.

Dated: December 2, 1997.

Marvin Kalt,

Director, Division of Extramural Activities, National Cancer Institute.

[FR Doc. 97–32089 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: SBIR Phase I—Innovative Approaches to Clinical Trials 1 Informatics (Telephone Conference Call).

Date: December 15, 1997.

Time: 2:30 p.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Conference Room 640, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate responses to Request for Proposal.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32090 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited R01 (Telephone Conference Call).

Date: December 16, 1997.

Time: 12:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C01, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Dennis Lang, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C16, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32087 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—''Internet-Based Research Support for Drug Abuse Researchers'').

Date: December 10, 1997.

Time: 9:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—''Development of a Computerized Neuropsychological Testing Programs'').

Date: December 17, 1997.

Time: 9:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (Contract Review)—''Analytical Techniques Programs'').

Date: December 19, 1997.

Time: 11:30 a.m.

Place: National Institute on Drug Abuse, NIH, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—''Develop Prevention Research Dissemination'').

Date: January 7, 1998.

Time: 9:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Lyle Furr, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (Conference Grants).

Date: January 8, 1998.

Time: 9:00 a.m.

Place: National Institute on Drug Abuse, NIH, NIDA Conference Room 10–05, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Dr. William C. Grace, Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–2755.

The meetings will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the

applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32093 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings of the Board of Regents, the Extramural Programs Subcommittee, Planning Subcommittee and the Subcommittee on Outreach and Public Information

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 27–28, 1998, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 26 in the 5th-Floor Conference Room, Building 38A, from 1 p.m. to 2:45 p.m., and will be closed to the public. The Planning Subcommittee will meet on January 26 in the 5th-Floor Conference Room, Building 38A, from 3:15 p.m. to 4:30 p.m., and will be open to the public. The Subcommittee on Outreach and Public Information will meet on January 27 in Conference Room B, Building 38, from 8 a.m. to 9:00 a.m., and will be open to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 3:30 p.m. on January 27 and from 9 a.m. to adjournment on January 28 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Bonnie Kaps at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the entire meeting of the Extramural Programs Subcommittee on January 26 will be closed to the public from 2 p.m. to 3:30 p.m. and the regular Board meeting on January 27 will be closed from approximately 3:30 p.m. to 4:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32091 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 17–19, 1997.

Time: 8:30 a.m.

Place: Embassy Suites, Chevy Chase, MD.

Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Clinical Sciences.

Date: December 17, 1997.

Time: 2:15 p.m.

Place: NIH, Rockledge 2, Room 4136, Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: December 23, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20897, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32086 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: December 3, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 6178, Telephone Conference.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–0178.

Name of SEP: Behavioral and Neurosciences.

Date: December 9, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Larry Stanford, Scientific Review Administrator, 6701 Rockledge Drive, Room 5184, Bethesda, Maryland 20892, (301) 435–1255.

Name of SEP: Clinical Sciences.

Date: December 10, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701

Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Biological and Physiological.

Date: December 10, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6178, Telephone Conference.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Biological and Physiological.

Date: December 11, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6178, Telephone Conference.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Behavioral and Neurosciences.

Date: January 18, 1998.

Time: 8:30 a.m.

Place: The Williard Hotel, Washington, DC.

Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32092 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Therapeutic Uses of Blood Vessel Growth Promoting Peptides Including Vascular Endothelial Growth Factor (VEGF) and Basic Fibroblast Growth Factor (FGF) for Cardiovascular Disease and Conditions Such as Myocardial Ischemia

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a domestic exclusive license to practice the inventions embodied in the patent referred to below to Collateral Therapeutics of San Diego, California. The patent rights in these inventions have been assigned to the government of the United States of America. The patent to be licensed is: ''Method To Foster Myocardial Blood Vessel Growth And Improve Blood Flow To The Heart'', U.S. Patent Application Serial No. 07/799,830 filed November 27, 1991, which issued as U.S. Patent No. 5,244,460 on September 14, 1993.

DATES: Only written comments and/or applications for a license which are received by NIH on or before February 9, 1998 will be considered.

ADDRESSES: Requests for a copy of this patent, inquiries, comments, and other materials relating to the contemplated license should be directed to: J. Peter Kim, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056, ext. 264; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The present invention relates to improvements in the treatment of diseases, and more particularly to procedures and compositions used to foster myocardial blood vessel growth and improve blood flow to the heart. The present invention provides a method for facilitating in a damaged heart or a heart in need of improved circulation the growth of cardiac blood vessels while reducing the risk of undesired vascularization in other areas of the body. The method comprises: (a) Inserting a catheter into a coronary artery and providing an infusion port accessible to the administration of coronary drug injections; (b) injecting an effective amount of a blood vessel growth promoting peptide into the heart; and (c) periodically repeating such injection on subsequent days until improved cardiac blood flow has been obtained. The subject invention may be applied to treating cardiovascular disease and conditions including myocardial ischemia and atherosclerosis of the coronary arteries. Such a therapy can potentially be used to partially or completely replace blocked coronary arteries with new blood vessels without affecting the degree of vascularity in the area of the body.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. Copies of the subject issued patent are available upon request.

Dated: December 1, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–32088 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Availability of Discretionary Grants for Services to Newly Arriving Refugees, Including: Promoting Increased Placement of Newly Arrived Refugees [1] In Preferred Communities; Responding to Unanticipated Arrivals or Significant Increases in Arrivals of Refugees to Communities Where Adequate or Appropriate Services do not Exist; Providing Orientation Services in Local Communities; Providing Mental Health Services on Behalf of Refugees in Local Communities; Supporting Ethnic Community Self-Help

AGENCY: Office of Refugee Resettlement, ACF, DHHS.

SUMMARY: This ORR standing announcement invites submission of grant applications for funding, on a competitive basis, in six categories: (1) to promote the increase of refugee placements in communities where they have ample opportunities for early employment and sustained economic independence; (2) to provide services to unanticipated arrivals, i.e., refugees who have arrived without prior notice in communities where adequate or appropriate services for these refugees do not exist; (3) to provide ethnically- and linguistically-matched orientation services to newly arriving refugees in the local communities; (4) to provide technical assistance to the grantees including those funded under Category 3, orientation; (5) to provide mental health orientation, staff development, and technical expertise to improve services for newly arriving refugee populations, and (6) to assist ethnic organizations to build bridges among newcomer communities and community resources.

This notice revises previous publications. The programs numbered (1) and (2) above were first published as Categories 1 and 2 of the notice published in the **Federal Register** on May 18, 1994 (59 FR 25929). The notice was revised January 17, 1995 (60 FR 3416). A Category 3, Ethnic Community Organizations, added in the revision of January 17, 1995, was canceled as published in the **Federal Register** on February 15, 1996 (61 FR 6018). The next revision was published in the **Federal Register** on June 25, 1996 (61 FR 32833) with new categories, numbered 3, Orientation, 4, Orientation Technical Assistance, and 5, Mental Health Services. This notice retains the five categories in the June 25, 1996 announcement, and restores and revises the Ethnic Community Organization program as Category 6.

This announcement supersedes all prior announcements of the same name.

The categories are summarized as follows:

Category 1—Preferred Communities: To increase placement of arriving refugees in preferred communities where refugees have opportunities to attain early employment and sustained economic independence without public assistance. Eligible applicants are agencies which resettle refugees under a Reception and Placement Cooperative Agreement with the Department of State or the Department of Justice. Preferred communities awards will be Cooperative Agreements. ORR's involvement will include: review and approval of preferred community sites and review and approval of the design of program reports on progress toward project goals and outcomes.

Category 2—Unanticipated Arrivals: To provide services for significant numbers of, or increases in, the number of unanticipated refugees who have arrived in communities that are unable to provide adequate or appropriate services. The arrivals may be new populations to the U.S., or new to the location requesting additional resources. The arrivals may also be a significant and unanticipated additional number of a particular ethnic group in a community. Awards in this category will be grants.

Category 3—Orientation: To provide funds for grantees to serve newly arriving refugees through orientation services that are ethnically-and linguistically-matched to the targeted refugee population.

Under Category 3, applications will be accepted for orientation programs designed to provide newly arriving refugees with information on local resources, community services and institutions, American mores, customs, laws, responsibilities associated with being new residents of their communities, and other appropriate topics.

Applications will be accepted from prospective grantees to provide services in communities where new refugees are arriving and where available orientation materials are not appropriate or adequate. Awards in this category will be made as grants.

Category 4—Technical Assistance to Orientation Grantees: To provide technical assistance to orientation projects awarded under Category 3 and other orientation programs serving refugees.

Category 5—Mental Health Services: To improve services to newly arrived populations who have been made vulnerable in their resettlement by having suffered mental and/or physical torture prior to or during their escape. Applications are encouraged from agencies that support resettlement services by providing staff development consultation to staff who work directly with traumatized populations and orientation activities for the new populations and for the mainstream mental health providers. In addition, and if appropriate to the newly arriving refugee populations, projects may be funded to develop technical knowledge concerning particular groups and the clinical interventions that effectively treat them. The knowledge and experience gained by these projects will be made available throughout the refugee resettlement program.

Category 6—Ethnic Community Organizations Program. This program is to provide assistance to ethnic organizations comprised of and representative of newly arrived refugee populations to build bridges among newcomer refugee communities and community resources. The applications will be accepted from a national, regional (multi-state), or local level and may include efforts to address community building, community and family strengthening, cultural adjustment orientation, and mutually supportive functions such as information exchange, leadership training, and resource development.

Categories 1, 3, 4, and 5 solicit applications for project periods up to three years. Category 6 solicits applications for project periods up to

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

five years. Awards, on a competitive basis, will be for one-year budget periods. Applications for continuation grants, to extend activities beyond the one-year budget period, will be entertained on a noncompetitive basis in subsequent years within the project period, subject to the availability of funds, timely and successful completion of activities during the budget period, and determination that such continuations would be in the best interest of the Government.

Awards for Category 2 will be for a single 17-month budget period. Applicants should view these resources as a temporary solution to an emergency created by unanticipated arrivals. ORR expects that by the end of the project period, States will have incorporated services for these particular refugees into their refugee services network funded by ORR social service formula allocations.

Projects and services allowed under this announcement for each category are described below. *Each application will be considered for one category only and must state specifically for which category the application is being submitted.* An applicant may apply for more than one category; however, each category must be applied for in a separate application.

Available Funds: In FY 1998, ORR expects to make individual new grant awards in amounts ranging from approximately $100,000 to $300,000. Amounts in subsequent years will depend upon the availability of funding, need, and the best interests of the Government. Approximately $800,000 will be available for awards under *Preferred Communities;* $500,000 under *Unanticipated Arrivals;* $400,000 for *Orientation;* $400,000 under *Orientation Technical Assistance;* $400,000 for *Mental Health;* and $1,000,000 for *Ethnic Community Organizations.*

The Director reserves the right to award more or less than the funds described above depending upon the quality of the applications, or such other circumstances as may be deemed to be in the best interest of the Government. Applicants may be required to reduce the scope of selected projects to accommodate the amount of the approved grant award.

Authorization: Authority for this activity is contained in Section 412(c)(1)(A) of the Immigration and Nationality Act, which authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed— * * * (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.'' In addition, section 412(a)(2)(B)–(C) gives the Director the responsibility to promote and encourage refugee resettlement in communities where the prospects for early self-sufficiency are good and the history of welfare utilization is low.

Application Submission: This announcement contains forms and instructions for submitting an application. *Applications must stipulate the category for which funding is being sought.* Applicants may submit applications for more than one category; however, each category must be applied for in a separate application.

Standing Announcement: This is a standing announcement, effective until canceled or modified by the Director of the Office of Refugee Resettlement. The Director will observe the following closing dates for all categories: January 31 and June 30, of FY 1998, and each subsequent year.

Organization of this Announcement: This standing announcement consists of two parts: Part I. the program categories under which grants will be awarded and Part II. general application information and guidance.

Eligible Applicants: For Categories 2, 3, 4, 5 and 6, eligible applicants are public and private nonprofit organizations.

Refugee serving organizations, especially local ethnic communities when applying under category 6, are encouraged to build coalitions in applying under this announcement. The activities funded by these grants are intended to serve as a catalyst to bring the community together to address the economic and social problems of refugee families and the refugee community. The goal in all cases should be to build and strengthen the community's capacity to serve its members in improving the quality of life and standard of living for refugee families. If an application represents a consortium (that is, the applicant includes other types of agencies among its membership), the single organization identified as applicant by the Authorized Representative's signature on the SF–424, Box 18.d, will be the grant recipient and will have primary administrative and fiscal responsibilities. An applicant entity must be a nonprofit organization.

For Category 1, eligible applicants are public and private non-profit agencies which currently resettle newly arriving refugees under a Reception and Placement cooperative agreement with the Department of State or with the Department of Justice. This announcement is restricted to these agencies because placements of new arrivals occur under the terms of the cooperative agreements, and no other agencies place new arrivals or participate in determining their resettlement sites. Applications shall include documentation that the applicant is a recipient of a Reception and Placement Grant. Applications lacking this documentation will not be considered.

For Further Information:

Concerning Categories 1, *Preferred Communities*, and 5, *Mental Health Services*, contact: Ms. Marta Brenden, Program Officer, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, Tel: (202) 205–3589, E-mail: mbrenden@acf.dhhs.gov.

Concerning Category 2, *Unanticipated Arrivals*, contact: Ms. Sue Benjamin, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, Tel: (202) 401–4851, E-mail: sbenjamin@acf.dhhs.gov.

Concerning Category 3, *Orientation*, and 4, *Orientation Technical Assistance*, contact:

Ms. Kathy Do, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, (202) 401–4579, E-mail: kdo@acf.dhhs.gov.

Concerning Category 6, *Ethnic Community Organizations*, contact: Ms. Anna Mary Portz, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, (202) 401–1196, E-mail: aportz@acf.dhhs.gov.

Part I. Program Categories Under Which Grants Will be Awarded

Category 1: Preferred Communities: Grants to Support Preferred Communities

A. Purpose and Scope

The purpose is to provide funds to be applied toward the costs associated with increasing the numbers of refugees placed in preferred communities and with reducing the numbers of refugees placed in high impact sites.

A proposed preferred community should have the following: (1) favorable circumstances described below, (2) services that meet the needs of arriving refugees for achieving self-sufficiency, and (3) reception of a minimum of 100 new refugees annually. ORR will consider exceptions to the annual

standard where the applicant provides substantial justification for the request and documents the community's history of arrivals, the period of time needed to reach a level of 100 new refugees, and the record of outcomes for achieving self-sufficiency soon after arrival.

Applicants must plan within their own network for improved placements. They may also consider planning cooperatively with other prospective applicants to create cost-effective, co-located resettlement services where, for example, the pool of newly arriving refugees for each network is too small to warrant individual offices.

Preferred Community sites refer to those localities where refugees have the best opportunities to achieve early employment and sustained economic independence without public assistance. Preferred communities should have a history of low welfare utilization by refugees. In addition, refugees should have the potential for earned income at a favorable level relative to the cost of living and to public assistance benefits in such communities. These communities should also have a moderate cost of living; good employment opportunities in a strong, entry-level labor market; affordable housing; low out-migration rates for refugees; religious facilities, if important to the refugees; local community support; receptive school environments; and other related community features that contribute to a favorable quality of life for arriving refugees.

Applicants may wish to consider the following ''arrival'' categories of refugees for preferred community sites:

Free cases: Those refugees who are determined in the allocation process to be ''free cases,'' that is, unrelated or without family ties to persons already living in the communities.

New refugee populations: Refugees who have no or few existing communities in the United States.

Other refugees: The applicant may identify refugees in the reception process who would accept the opportunity for resettlement in a preferred community: e.g., refugees who would otherwise be resettled under the rubric of ''family reunification,'' but who in fact are distant relatives and friends. These refugees may elect placement in a preferred community where there are opportunities described above.

B. Preferred Community Site Selection

ORR recognizes that changes in the selection of resettlement sites of refugees may result in changes to an applicant agency's network and should be preceded by careful attention and planning. Thus, as part of the application preparation, it will be incumbent upon the applicant to: (1) consult with ORR about prospective preferred sites; (2) propose sites that are either already listed within the applicant's Cooperative Agreement with the Department of State (DOS) or that will be proposed for DOS approval; (3) coordinate with other voluntary agencies whose local affiliates place refugees in the same sites; (4) inform and coordinate with State governments for site selection, adequate services, and program strategies to be developed; and (5) plan and coordinate locally with community resources, such as schools and public health agencies.

The application must, for the first budget year, specify the sites selected with a description of each site and the rationale for its selection. Applicants are encouraged to include planning activities in their application. The application should specify one or more preferred communities and should also propose to include one or more unspecified sites to be determined following planning activities during the course of each budget year. There should also be a description of coordination activities that occurred prior to the selection, and the ongoing evaluation and planning for placement in preferred communities. Additional sites proposed under approved applications during the period of the project will require ORR's concurrence under the terms of the Cooperative Agreement.

Preferably, the selected sites should be those that have had successful refugee placements and have the capacity for additional successful placements. However, the sites may be ones where refugees have not previously been placed, but which have all the elements of a successful refugee resettlement community, listed in Section D. 2, below.

Allowable activities for the preferred communities include services that would otherwise be provided through the State formula social services. ORR formula social services funding is awarded to States proportionate to the number of refugee arrivals during the previous three years and does not take into account newly arrived refugees. Grantees should view Preferred Communities award as a *temporary solution* to the increase in refugee placements in preferred communities.

Therefore, planning for the application and implementing the program must be done in concert with State Refugee Coordinators to assure an orderly transition and complement of services. The applicant shall describe and document this coordination and planning in the application. ORR anticipates that ORR formula social service funds provided to the States will reflect, over time, the increase in arrivals.

C. Allowable Activities

ORR will accept applications for the following activities:

(1) services needed for the increased placements in the preferred communities, (2) project planning and coordination activities, and (3) national and local project management costs associated with these activities.

D. Application Content

The application must include the following:

1. Description of the proposed program. Include the rationale for meeting the goals of this Announcement: i.e., the increased placement of refugees in preferred communities and the diversion of refugees from communities with histories of extended use of welfare. Descriptions should include anticipated improved resettlement opportunities; the employment services available in the new location, including those to be funded under this grant, if awarded; and the cost implications in both the impacted and preferred sites for the population shifts in local resettlement services.

2. A description and rationale for sites from which placements will be diverted. A list of the designated and potential sites and the rationale for each site with respect to the following criteria: o Local community support (e.g., letters, financial and in-kind donations, news clippings that the community supports the placement of these refugees in their area); o State consultation (e.g., copies of letters; notes of planning/coordination meetings);

- Local community support (e.g., letters, financial and inkind donations, news clippings that the community supports the placement of these refugees in their area);
- State consultation (e.g., copies of letters; notes of planning/coordination meetings);
- Evidence of availability of entry level and other appropriate employment opportunities (e.g., letters from current and repeating employers of refugees);
- History of low out-migration rates for proposed sites, with documentation for the last two years;
- Moderate cost of living (e.g., needs and payment standards from TANF programs from the State, statements of

voluntary agency affiliates, statements from refugees);

- Low welfare benefit levels relative to earnings potential;
- Qualified staff—give job descriptions and resumes, as available, and show how staff will be linguistically and culturally suited to assist the prospective refugees;
- Affordable housing—provide average rental costs for apartments of a specified number of bedrooms and describe access to and distance from services and potential employment.

3. A description of the caseload: e.g., free cases, ethnicity, new or existing ethnic group, interventions to be used to promote stability of placements, proposed numbers, proposed placement schedule, and back-up strategy should the proposed placement schedule fail.

4. A description of national and local project management. A statement of expected outcomes, e.g., refugee arrivals and participants in social services, such as, employment. Number expected to enter employment; 90 day retention rates and/or welfare avoidance, reductions, and terminations; expected hourly wage and the number of jobs with health benefits. Projected outcomes must include the increase in placements in Preferred Communities and the diversion of placements from communities where there is a history of extended welfare use.

5. A description of the national and local planning process, of coalitions formed to support the new placements, and the consultative process used to support the implementation. If several local agencies are planning a coordinated project, e.g., placing refugees from the same ethnic groups in the same designated sites, describe the coordination of these plans. Include discussion of anticipated outcomes of the placement strategy for new arrivals.

6. Budget, including line items and a narrative justification for each line. Clearly state the costs for national and local planning and project coordination. Discuss relationship between costs proposed for this grant and costs (e.g., for services) which will be covered by existing refugee or mainstream funding.

E. Application Review Criteria

Preferred Communities applications will be reviewed, scored and ranked utilizing the following criteria:

1. Clarity of description of proposed program and soundness of rationale for achieving the goals of the Announcement. Reasonableness of cost implications in both the impacted and preferred communities. Adequacy of the anticipated improved resettlement opportunities as well as the diversion of placements from sites with histories of extended welfare usage. Soundness of refugee social services in the new community and choice of services to be funded by this grant. (20 Points)

2. Clear and comprehensive description of the preferred sites proposed in terms of community support, Federal, State, and local government consultation, and linkages, cost-of-living, out-migration history, housing, and employment availability, welfare benefit levels relative to potential earnings, and quality of life features, such as school environment and available religious facilities. Adequacy of description of sites from which refugees will be diverted and the rationale for diverting cases from them. (25 Points)

3. Appropriateness to the targeted population of the proposed diversion, and strategies to be used to promote stability of placements. (15 Points)

4. Adequacy of national and local management, including objectives and outcomes, reporting procedures, outcome measures, data collection and monitoring. (10 Points)

5. Adequacy of planning process and reasonableness of anticipated outcomes. (15 Points)

6. Reasonableness of the budget and adequacy of line item narrative; coordination of these grant funds with other funds. (15 Points)

Category 2—Unanticipated Arrivals or Increases in Arrivals of Refugees to Communities Where Adequate or Appropriate Services Do Not Exist

A. Purpose and Scope

This program is intended to provide communities with the capability to respond to the social services needs of refugees whose resettlement in the applicant's community is unanticipated and who are not included in ORR's social service formula allocation to the State in which they are placed. The funds may be used to enable communities to establish or expand existing services in situations, where: (1) the existing service system does not have culturally and linguistically compatible staff; or (2) where refugee services do not presently exist; or (3) where the service capacity is not sufficient to accommodate significant increases in arrivals.

Examples of situations for which applicants may compete for a grant under this program include: (1) the unexpected arrival of more than 100 refugees in the community where the formula services funds are committed to social services for the current refugee population, but there are no available resources to fund culturally and linguistically appropriate services for the unanticipated number of arrivals, or (2) the State formula social service dollars are sufficient for most services, but the unanticipated population has unusual social service needs; and the services currently funded will not be sufficient for the new arrivals.

Applications will be accepted only for proposals for services in communities which have received, or expect to receive, minimally 100 or more persons within a one year period as an unanticipated population to a single local community. This is a minimum, not a standard. The reasonableness of the proposal will depend, in part, on the ratio of unanticipated arrivals to the anticipated resettlement caseload in the applicant's community. The applicant must establish that the unanticipated number is significant relative to the resident population by documenting arrivals, both anticipated and unanticipated. The application must describe the time period of unanticipated arrivals, i.e., the start date when the unanticipated arrivals began and the length of time over which the arrivals are expected to continue. Applications which do not satisfy the requirement for documentation will not be considered.

ORR encourages the formation of coalitions of organizations which propose to serve the new population(s) jointly, with one agency designated as grantee, responsible for administration of the project. ORR will only support the establishment of services that are culturally and linguistically appropriate to the new arrivals.

This grant program is intended to supplement a State's existing refugee services network by responding to unmet needs of new refugee populations shortly after arrival in the community. Grantees should view these resources, therefore, as a *temporary* solution to insufficient services necessitating program adjustment due to the unanticipated arrival of a refugee population in a specific community. ORR's expectation is that the State will have incorporated services for these new populations into its refugee services network, funded by formula social service dollars, by the end of the grant project period. In the grantee's final report, the transition of the services should be discussed indicating whether the services are now supported by the State, other public or private resources, or are no longer needed, with supporting information on the target population.

B. Allowable Services

ORR will accept applications under this announcement for projects specifically providing unanticipated arrivals the type of activities generally funded by States under their social services formula allocation, in accordance with section 412(c)(1) of the Immigration and Nationality Act for refugee social services. In general, such service categories are defined as employment services, language training, and other support services, such as orientation activities. Applications under this section should indicate appropriate bilingual and bicultural services will be provided. Services provided by all grantees, whether private or public, must comport with the regulations at 45 CFR sections 400.147, 400.150, and 400.154–.156 regarding eligibility for services, scope of services and priorities for services.

C. Application Content

1. Statement of purpose and need. A description of the target population(s); presence, or absence of prior presence, of an ethnic population in the community(ies); documentation of the arrivals of the population(s), including first date of admission; expected duration of the arriving population; number (at least 100 refugees per year) of unanticipated arrivals relative to the expected admissions; identification and description of the need(s) for social services; discussion of the relative significance of the unanticipated arrivals to the expected arrivals and the impact on available services; letter from the national voluntary agency(ies) substantiating that there will be an unanticipated arrival of at least 100 or more refugees or entrants of the target population or secondary migrants.

2. Description of the planning process. A list of organizations by name and their role in the project activities, and a list of all organizations in the community(ies) providing services to the unanticipated refugees. Summary of the planning activities with lists of participants, dates of meetings and summary and results of the discussions. Letters of support from the resettlement network agencies who either participate in the project or whose work with refugees will be affected by the proposed grant activities.

3. Organizational qualifications. Demonstration of organizational qualifications of the agency proposed to act as fiscal agent for the project. For each organization proposed for project activities, include staff and position information with biographical sketch of known staff or summary of desired qualifications and position activities.

4. Project goals. Statement of outcomes and performance measures that will demonstrate impact of the project on the arriving refugees. Plan for continuation of services following the period of grant support. Letter from State Coordinator acknowledging the presence of unanticipated arrivals and stating their openness to discuss continuation of support at the close of the project.

5. Project line item budget and budget justification. A line item budget and narrative justification which conform to Block 15 of the SF 424 object class categories. The justification must include estimation methods, unit costs, and whatever quantitative detail is sufficient for the calculation to be replicated.

D. Application Review Criteria

1. Quality of the description of the target population; the justification of the significance of the unanticipated arrival population relative to the expected arrivals; their need for services; and a letter from the national voluntary agency(ies). (15 points)

2. Quality and appropriateness of the planning process and the resulting project strategy; evidence of appropriate collaboration with other refugee service providers and public and private organizations serving the unanticipated refugees; and adequacy and reasonableness of the strategy and proposed activities to achieve the projected outcomes. (35 points)

3. Qualifications of the organization(s) proposed to carry out the project activities; evidence of collaboration; capability in acting as fiscal agent, if applicable. (15 points)

4. Quality of the project goals; appropriateness of the performance measures to the project activities; appropriateness of the performance outcomes in demonstrating desirable impact on the target population of arriving refugees. (20 points)

5. Appropriateness and reasonableness of the costs in the budget; clarity and reasonableness of the line item narrative justification. Evidence that the budget items reflect the project activities. (15 points)

Category 3—Community Orientation Activities and Assistance Program Grants for Local Communities

A. Purpose and Scope

Since 1992, the majority of refugee arrivals in the United States represent ethnically diverse populations from such countries as Russia, Somalia, Bosnia, Croatia, and Iraq. Compared to the pre-1992 refugees, mainly Southeast Asians who were provided overseas classroom orientation training, the majority of the post-1992 refugees have not attended a pre-departure formal cultural orientation program in preparation for their new life in the United States.

Funding constraints and restrictive conditions at some transit and departure locations, where refugees are processed for entry into the U.S., contribute to the lack of preparation for life in a new country. This is particularly evident where new refugee arrivals do not have access to pre-departure orientation organized by resettlement agencies funded under the auspices of the U.S. Department of State, Bureau for Population, Refugees, and Migration.

In addition to scarce, pre-arrival orientation, there are few communities in the U.S. where new arrivals can join members of their own ethnic group. Notwithstanding, information about American life and resources are usually provided through friends or through word-of-mouth. Service providers who come into contact with new arrivals may not be sufficiently knowledgeable of the culture and values of the new arrivals. Furthermore, limited bilingual and bicultural resources further exacerbate the assistance effort as well as the new arrivals' process of integration into their communities.

ORR is aware that to assist these new arrivals to become economically self-sufficient and self-reliant within their newly resettled communities, a comprehensive, culturally and linguistically appropriate orientation program is key. Additionally, a cross-cultural training and orientation program for local refugee and mainstream service providers may enhance their assistance efforts with newly arriving refugees and reduce the conflict or friction of cultural and social misunderstandings.

B. Objectives of ORR

1. To provide comprehensive culturally and linguistically appropriate orientation training to newly arrived refugee families through bilingual, bi-cultural staff representative of the new arrivals' cultural and linguistic make-up.

2. To identify sub-groups (e.g., home-bound women, the elderly, and youth) of new arrivals who are more likely to face significant cultural obstacles to their transition to a new life and to provide them specialized orientation training customized to their specific needs.

3. To provide orientation and cross-cultural training to refugee and mainstream service providers on new refugee populations.

4. To provide training to refugee caseworkers and interpreters to improve their ability to deliver culturally and linguistically appropriate services to new refugee populations.

5. To provide the mainstream community with information about new refugee populations resettled in their community.

6. To provide new ethnic communities with small amounts of funds to form advisory groups for the purpose of community and grass roots organizing.

C. Allowable Orientation Activities for

1. *Newly Arriving Refugee Populations.* Conducting outreach (for example, home visits and ethnic group meetings) to new arrivals to determine needs.

Convening a local work group/task force on orientation. The composition of the group must include representatives of the ethnic composition of new arrivals. The primary purpose of the orientation work group is to plan and consult with local new arrivals and ethnic communities on the type of orientation materials, services, and training design which best fit their needs.

Adapting, if necessary, existing orientation materials to ensure that materials are culturally appropriate for the target population.

Designing and implementing an orientation and cross-cultural training program by bilingual and bicultural staff for the newly arriving refugee population, taking into consideration training customized to the specific informational needs of each group, for example, heads of households, home-bound women, youth, and the elderly.

Designing and implementing a mechanism of ensuring customer feedback and assessment of each training session. Customers' feedback must be incorporated for improvement of future training.

Compiling records and materials of training activities into a training package for replication with other new arrivals.

2. Refugee and Mainstream Service Providers and the Community-at-Large. Planning and consulting with refugee and mainstream service providers on their need for information on new arrivals, and providing training to service providers, caseworkers, and interpreters to improve their ability to deliver culturally and linguistically appropriate services to new refugee populations.

Designing a mechanism of ensuring customer feedback and conducting assessment of each training session. Customers' feedback will be incorporated into future training.

Compiling records and materials of training activities into a training package for future replication with other new arrivals.

Conducting public relations activities, such as providing information via a newsletter, informational brochures or video, and attending community meetings to provide to the community-at-large information about new refugee arrivals resettled in their community.

3. *Ethnic Community Groups.* Convening or assisting in convening, members of newly arriving ethnic communities to form their own advisory board for self-help purposes.

Recording all community assistance activities in the form of reports and case studies for future use by other ethnic communities in community organizing and development.

D. Application Content. Applications for the Community Orientation and Assistance Program should contain a detailed description of proposed activities and a plan of action, including a timetable for implementation, and anticipated measurable outcomes and benefits which directly meet the needs of the target population to be served. These areas should be addressed:

1. An understanding and knowledge of the unique characteristics, cultural background, and needs of the target groups to be served, including discussion of the service methodology that would be linguistically and culturally appropriate for each target group.

2. An understanding of the domestic and overseas orientation services as well as how linkage and coordination can be established between the overseas and domestic service providers to maintain continuity of services to meet the orientation needs of the new arrivals.

3. Planning and consultation with the target population, e.g., new arrivals and refugee and mainstream service providers, to design and implement an orientation program that best fits their needs. How the applicant proposes to provide a comprehensive and coordinated project design, implementation timelines, and achieving measurable outcomes.

4. Convening, or assist in convening, members of the newly arriving ethnic groups in their effort toward organizing for self-help. Description of how the proposed advisory groups are to be established.

5. Public relations activities with the community-at-large focusing on mutual understanding and good will between the refugees and local communities.

6. Customer feedback and assessment of the training as well as the project's progress, and how the results of customers' feedback will be used.

E. Application Review Criteria

1. Demonstrated knowledge of the unique characteristics of the various populations to be served; demonstrated experience in the provision of orientation service and/or training; and knowledge of which service modality best fits each target population. (25 points)

2. Demonstrated understanding of overseas and domestic orientation services, and the appropriateness of the proposed plan for linkage and coordination. (10 points)

3. Adequacy and applicability of the project management plan in the areas of planning, designing, implementing, timelines, and proposed measurable outcomes. Qualifications of the applicant to carry out all the proposed activities successfully. (25 points)

4. Demonstrated reasonableness and cost effectiveness in the budget with reference to the use of bilingual and bicultural staff in all professional capacities, the staffing plan, and qualifications of key personnel. (15 points)

5. Demonstrated knowledge of refugee ethnic communities, and experience in community organizing and development. (10 points)

6. Appropriateness of proposed project's measurable outcomes. (15 points)

Category 4—National Technical Assistance Project in Refugee Orientation, Cross-cultural Training and Alliance Building

A. Purpose and Availability of Funds:

This section announces the availability of Fiscal Year 1998 funds for a national technical assistance project for refugee orientation, cross-cultural training, and alliance building in communities heavily impacted by recent refugee arrivals. The purpose of this category is to respond to the immediate needs of States, refugee and/or local service agencies, and mainstream agencies: for training and technical assistance in cross-cultural awareness and knowledge; for skills enhancement in resolving and mediating cross-cultural conflict between and among refugee and non-refugee groups; and for providing culturally and linguistically appropriate

service methodologies to refugee communities.

The successful applicant will provide group training and technical assistance in approximately twelve (12) sites identified as impacted by new refugee arrivals, and may include the grantees funded under Category 3 of this announcement. Partnerships with ORR customers, e.g., States, other grantees, community-based organizations (CBOs), and other Federal agencies, will be initiated to coordinate nationally in the areas of conflict resolution and mediation and to enhance knowledge of cross-cultural understanding and alliance building.

ORR anticipates funding one project through the mechanism of a cooperative agreement. ORR will be closely involved in the review and approval of the following: site selection criteria, sites and recipients of the technical assistance and training, training curricula, assessment tools, on-site training and technical assistance sessions and materials, and all project-related reports.

B. Allowable Activities

Proposed activities should be tailored to reflect the orientation, cross-cultural and mediation needs of local communities. The types of activities which ORR may fund include, but are not limited to, the following:

1. Convening a national training and technical assistance work group for project consultation and design, to identify expert trainers, and to develop strategies for dissemination of project outcomes;
2. Identifying proven best practices in cross-cultural conflict resolution and alliance building for the purpose of adapting them to the training and technical assistance needs of the project participants;
3. Identifying the needs of State and local agencies for assistance in orientation, conflict resolution and mediation strategies, and culturally and linguistically appropriate service delivery;
4. Developing a training plan of orientation, conflict resolution and mediation for local communities which includes expanding the involvement and participation of non-refugee local agencies through such activities as group training and on-site individualized sessions for all agencies which interface with newly arrived refugees;
5. Developing assessment and evaluation tools, and conducting assessment of project activities;
6. Developing a list of training and technical resources, and devising a system for updating and transferring training technology for future use;
7. Establishing an electronic medium for dissemination of information and refugee training resources for use by other practitioners.

C. Application Content

1. A discussion of the purpose of the technical assistance and training activities to be conducted under the scope of the grant.
2. A comprehensive description of the plan for providing coordination of project activities at the local, state, and regional levels.
3. A comprehensive list of proposed sites for the technical assistance OR a comprehensive list of criteria for site selection.
4. A discussion of the proposed plan for technical assistance and training for each site and target group.
5. A description of the process to form a national training and technical assistance workgroup. A list of the criteria for selection of the task force members.
6. A description of the management of the plan for implementation of all project activities.
7. A description of the expected measurable outcomes for each project activity.
8. A list of the proposed project's key personnel and/or consultants.
9. A proposed budget with narrative justifying each line item.

D. Application Review Criteria

Applications will be reviewed and scored on a competitive basis against the following evaluative criteria. Points are awarded only to applications which respond to this competitive area and to these criteria:

1. The extent to which the purpose of the project is met, including how the training and technical assistance needs of local sites are identified and proposed to be met, and the benefits (measurable outcomes vs. process outcomes) to be gained by each target group. (15 points)
2. The comprehensiveness of the proposed plan for coordination of project services at the local, state, and regional level. The extent to which the proposed sites (or site characteristics, if specific sites have not been selected) are appropriate and directly related to the objectives of the project. (10 points)
3. The criteria for selection (e.g., qualifications and experience in working with refugees, and in fields related to the objectives of the project) of proposed members of the national training and technical assistance workgroup. (5 points)
4. The quality of the plan of operation and management. The extent to which the plan of management ensures implementation of project activities and customer feedback, the adequacy of proposed resources, and the ability of the applicant to deliver the services in a timely manner. (20 points)
5. The quality of the proposed training and technical assistance plan for each site and target group, the appropriateness of training and personnel resources, and the degree to which the training will increase the capacity of the trainees to provide quality services to their refugee clients and/or increase the capability of the trainees to design and implement cross-cultural and conflict resolution strategies. (20 points)
6. The qualifications and experiences of key personnel and/or consultants in working with the target population and in fields related to the objectives of the project. (10 points)
7. The quality of the proposed plan of assessment of project activities, and appropriateness of proposed project measurable outcomes (versus process outcomes). (10 points)
8. The cost-effectiveness and reasonableness of the proposed budget, and budget narrative. (10 points)

Category 5—Mental Health Services

A. Purpose and Scope

The condition of a refugee's physical and mental health is a major factor affecting resettlement and socio-economic adjustment. The most serious mental health conditions, such as depression, anxiety-related disorders, and post traumatic stress disorders are often seen in refugees who have experienced severe trauma, physical abuse, and torture.

Most refugees receive pre- and post-arrival health screening at the time of their entry into the United States. It is through screenings that physical health conditions are diagnosed and treated. Serious mental health conditions are sometimes identified by health screeners and service providers, but more frequently they are not diagnosed until much later in the resettlement process. These mental health conditions interfere with a refugee's progress toward economic self-sufficiency. Especially vulnerable are refugees who have experienced traumatic events, such as the death of relatives, loss of home, and witnessing of atrocities, either before they leave their country of origin and/or during migration. Some have experienced physical and psychological torture, deprivation, hunger, isolation, and violence. In addition, refugees are

often further traumatized during the resettlement process because their cultural backgrounds are in sharp contrast with mainstream American social and cultural practices.

For many, resettlement means mastering a new language and adjusting to U.S. society and its economy, its expectations, customs, and cultural values, which may be significantly different from their own. These challenges confront all refugees, but are more difficult for those who suffered major physical, social, economic and political losses.

Less serious, but also a barrier to economic self-sufficiency, are transitory emotional difficulties which can be characterized as social adjustment problems. If not adequately addressed, these may accumulate over time and hamper the resettlement process. Often these problems are handled by supportive bilingual resettlement staff and ESL teachers who have an understanding of the refugees' plight and are sensitive to the challenges and difficulties refugees face. This support often facilitates the refugees' transition to their adoptive country and lessens the impact of migration-related stressors, contributing to the refugees' progress towards self-sufficiency.

Beyond the support from resettlement staff, volunteers, and ESL teachers, refugees frequently do not receive mental health services. Most community mental health services do not have bilingual staff who match the local refugee groups. Also, refugees are often not receptive to mental health services because of the stigma attached to mental illness. Direct service workers can become overwhelmed by working with individuals who have experienced torture and other trauma. Regular consultation for direct case workers from experienced mental health professionals can provide useful feedback to improve services to refugees disabled by trauma and supportive professional relationships.

B. Objectives of ORR

ORR seeks to provide resources to local community organizations to address the need for mental health interventions in the refugees' communities in the following ways: staff development training for bilingual caseworkers, ESL teachers, and volunteers; orientation of refugees to promote understanding and utilization of supportive assistance; and orientation of mainstream mental health providers to the refugee program, to arriving refugee populations, and to multi-cultural perspectives for effective treatment of refugees. It is ORR's intent that direct service workers, such as bilingual case managers, ESL teachers, and volunteers who often provide important support to refugees, have the benefit of regular consultation for the purpose of increasing their effectiveness in working with refugees who are experiencing the results of torture and social adjustment issues due to migration.

Also, ORR seeks to promote an increase in the level of awareness of available mental health services among newly arriving refugee populations that have experienced significant trauma. In addition to staff development and orientation, it is permissible as part of this project to provide direct clinical services to refugee patients in order to expand knowledge and technical expertise related to refugee groups that have experienced torture and other trauma. The technical knowledge of each group and the effective treatment strategies gained through each project shall be made available through written reports and oral presentations to the ORR refugee resettlement program at conferences convened by ORR, to the mental health community projects funded by ORR, and to the Community Mental Health Services, SAMHSA (PHS). However, the main objective of this category is the expansion and dissemination of information on effective treatment to direct workers providing services to the particular refugee group with associated trauma.

C. Allowable Activities

ORR will accept applications under this Category for the following activities: (1) ongoing mental health professional consultation, supervision, and training for bilingual caseworkers, ESL teachers, and volunteers in working with refugees who are in the process of resettlement and exhibiting extreme behaviors; (2) orientation to U.S. mental health services for newly arriving refugees; (3) orientation of mental health professionals to newly arriving refugees and the programs of resettlement; and (4) development of a body of technical knowledge and expertise concerning newly arriving refugees who have experienced severe trauma and the clinical interventions that are therapeutically effective with them.

D. Application Content

1. A description of the target population(s) and their need for the proposed project activities: i.e., orientation; staff development; or development of technical assistance.

2. A description of the planning process used in developing the application: the names of the organizations and the roles played in the planning; a comprehensive list of all organizations in the community working with the target population; and the manner by which all direct service professional staff will benefit from the project's orientation, consultation and training services.

3. A description of the project strategy: orientation; staff development; and development of technical assistance to address the target populations' need for mental health services as listed under ''allowable activities.''

4. A statement of the status of need for services and the projected outcomes expected from the services provided.

5. A description of the management plan providing oversight, monitoring, and program reports, including the applicant agency's qualifications to carry out the proposed activities; and key personnel, including consultants for professional mental health services.

6. A line-item budget with narrative justification for each item.

E. Application Review Criteria

1. Adequacy of the description of the target population(s) and the need for proposed activities. (10 points)

2. Demonstration that the planning process is community-wide and comprehensive in addressing the needs of direct service staff for ongoing professional consultation, supervision, and training in working with refugees exhibiting needs for mental health services. (20 points)

3. Appropriateness and adequacy of the strategy of services proposed. (30 points)

4. Relevance and appropriateness of the proposed program outcomes to the project's objectives. (20 points)

5. Adequacy of the management plan, monitoring plan, and proposed program reports. Appropriateness of key personnel and consultants implementing the project. (10 points)

6. Reasonableness of the budget; the completeness of the line-item narrative. Cost-effectiveness of the budget in providing for the services. (10 points)

Category 6—Ethnic Community Organizations

A. Purpose and Scope

Respondents to this program category will be of two general types:

(1) Multi-site or national ethnic organizations which propose to develop or strengthen local ethnic agencies and/or a national network of ethnic community agencies for purposes of linking refugees to community resources; or,

(2) Emerging local ethnic organizations which seek to function as

bridges between newly arrived refugee groups and mainstream local resources and organizations.

ORR expects to make approximately 4 national and 6 local awards in this program area.

A community is self-sufficient when it has the capacity to generate and control its own resources, determine its own goals, set priorities, plan and mobilize community members, including the elderly, women and youth, to work together to achieve these goals, and to create collaborations with others from within and outside the community to further these goals.

ORR recognizes that one key to strengthening communities is the development of strong community based organizations (CBOs). A strong ethnic organization can tap into the community's desire for self-help, improve services, nurture leaders, raise funds from various sources, explore housing and economic opportunities, collaborate with mainstream agencies and groups, and at the same time, remain accountable to the community.

Strong CBOs can also facilitate positive interaction between refugees and established residents in mainstream communities. The ability to organize and to voice their concerns collectively gives refugees a better sense of identity and hope for their own and their community's future. Refugee self-help organizations can be important building blocks for effective resettlement and can function as bridges between the refugee community and local resources.

Many refugees who arrived in this country during the past two decades have already organized themselves into self-help groups in order to assist their own members, to foster long term community growth, to preserve their cultural heritage, and to assist community members in securing employment and other social services. More newly arrived refugee groups, who have come to the United States in recent years, have not yet organized into self-help groups; consequently, they may be experiencing barriers to accessing mainstream resources and full participation in the economic, social, and political activities of the larger community. They lack information about the process of building community capacity.

Effective program models for self-help groups result in:

- Creating a shared, dynamic vision of the community's future which inspires members to work together to secure that future;
- Moving refugees from being recipients of services and assistance to being active partners in their integration into community;
- Linking individual self-sufficiency to community self-sufficiency;
- Developing effective leadership within the organization;
- Allowing local communities to apply their own cultural, political and socio-economic values to long term strategies and programs;
- Creating close connections among community needs, program, and service delivery systems;
- Providing avenues for resources that are generated locally (through service delivery or economic development) to remain within the community;
- Fostering collaboration among refugee and mainstream service providers, policy makers, and public and private institutions.

In recognition of the special vulnerability of newly arrived populations, ORR proposes through this announcement to provide funds to ethnic organizations established among refugee groups who have arrived in this country since 1991. Target populations range from a minimum of 2,000 to a maximum of 50,000 arrivals from a single country between FY 1992 and FY 1996. (ORR has dedicated other resources toward the ethnic populations experiencing 100,000 or more arrivals during this period.)

Further, at least 50% of the specific ethnic population currently in the U.S. should have arrived during the past five years. According to ORR's data, this includes refugee populations from the former Yugoslavia, Haiti, Iraq, Somalia, Sudan, and Liberia. Awards, however, will not be based solely on population numbers, but will be based on the justification and documentation of the applicant, including such factors as community service needs and available resources. If an applicant can demonstrate that its ethnic arrivals meet the minimum threshold of 2,000 for the same period and correlate with the above description, the organization representing that refugee population may submit an application for funds under this announcement. The application must provide documentation that includes the name, alien number, date of birth, and date of arrival in the U.S. for each refugee claimed.

In continuation applications under this category, for the subsequent second through fifth budget periods, applicants must demonstrate adequate progress toward project goals and outcomes to be eligible for continuation funding. In subsequent year continuation applications, the grantee will be asked to document receipt of non-ORR funds from other sources toward cost-sharing of the project's activities. The requirement will be not less than 10% of the requested funding for the third year award, 20% for the fourth year award, and 30% for the fifth year award. The cost-sharing may be in cash or in-kind contributions.

B. Allowable Activities

Successful *national* organization applicants to this notice may propose activities which may include, but are not limited to, the following:

- Technical assistance and support to local ethnic organizations
- Ethnic community development
- Leadership training
- Resource development
- Public education and agency linkage through an Internet site
- Information dissemination on ethnic-specific issues
- Convening of national or regional meetings
- Development or translation of ethnic-specific publications

Successful *local* self-help organization applicants to this notice may propose any of the following activities:

- Public education activities designed to inform the refugee community about issues essential to functioning effectively in the new society;
- Orientation and assistance to parents in connecting with school systems and other local public or private institutions;
- Information services on health care—information on access to health care for the uninsured, on health insurance, on health maintenance organizations, on the importance of preventive health, and on available universal coverage services, e.g., immunizations;
- Pairing refugee individuals or families with community volunteers;
- Leadership training for such activities as community organizing, fund raising, non-profit management;
- Education and training to prepare refugees to become citizens;
- Information and training on the roles of men and women in the U.S. culture, and against child abuse, sexual harassment and coercion, and domestic violence, including bilingual staff assistance for women's shelters and techniques for protection;
- Activities designed to improve relations between refugees and the law enforcement communities;
- Developing and operating community centers which serve the designated, newly arrived refugee population.

The above are examples of services. Applicants may propose other services,

to the extent they are consistent with the goals stated above, and may request funds to cover core or general operating expenses. In all instances, however, activities must be designed to supplement, rather than to supplant, the existing array of refugee services available in the community.

Applicants must give assurance that their governing bodies, boards of directors, or advisory bodies are knowledgeable and responsive to refugee concerns. This can be demonstrated through majority refugee representation on these bodies or through some other way. Women should be included on these representative bodies, as well.

While activities proposed do not have to be directly employment related, planning and coalition building should be guided by the overarching goal of improving the economic condition of refugee families and of giving them the information needed to adjust socially and economically to their new country and their new communities.

Non-Allowable Activities: Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (i.e., activities related to events in the refugees' country of origin).

C. Application Content

Applications for Ethnic Community Organizations at the local or national level (as specified on the SF–424 Application for Federal Assistance, Boxes 11. and 12.) should contain the following information:

1. A discussion of the national or local focus relevant to the refugee ethnicity which the applicant seeks to represent or serve including numbers and dates of arrival, and an analysis of the need for this project with reference to the specified population;

2. A description of the applicant's expertise (organizational or leadership), to include a project staffing plan with staff and consultant (if proposed) qualifications, evidence of applicant (but not necessarily the ethnic organization's) nonprofit incorporation, a list of Board of Directors or representative refugee advisors indicated with gender, and a discussion of how directors or advisors were chosen;

3. A statement of the project goals and objectives with anticipated outcomes and results of benefit to the local or national ethnic community;

4. A description of local or national ethnic community planning and support to work collaboratively on the project. If the project is designed to enhance ethnic leadership, the application should describe how these individuals have been or will be identified and how the overall community will be brought into the plan;

5. A proposed plan of action, including the scope of activities and a timetable for implementation;

6. An estimated line item budget narrative with a detailed justification of how the applicant arrived at estimated costs.

D. Application Review Criteria

Each project proposal will be rated individually by an independent review panel using the criteria described below. Local level projects and national/multi-state projects will be ranked separately. In making awards, the Director will exercise some discretion to ensure that a range of ethnicities are supported in their self-help efforts under this program.

1. Degree to which the applicant understands the focus and need of the relevant ethnic group, as evidenced by the discussion presented. (10 points)

2. Applicant's capacity, including any enhancement due to proposed partners or consultants, to implement the proposed plan of action. (15 points)

3. Appropriateness of goals and the extent to which outcomes proposed are measurable. (20 points)

4. Evidence of ethnic community involvement in the project planning, suitable identification of project leaders as appropriate, and support for the plan of action. (15 points)

5. Clarity and appropriateness of the project design, plan of action and timetable for implementation, and likelihood that proposed activities and results will benefit the community. (30 points)

6. The budget is reasonable, clearly presented, sufficiently detailed, and cost effective. (10 points)

Part II. General Application Information and Guidance

All applications which meet the stipulated deadline and other requirements will be reviewed competitively and scored by an independent review panel of experts in accordance with ACF grants policy and the criteria stated below. The results of the independent review panel scores and explanatory comments will assist the Director of ORR in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by the reviewers. Highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: comments of reviewers and of ACF/ORR officials; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director of ORR.

A. Application Preparation and Submission

Availability of Forms—Attachments contain all of the standard forms necessary for the application for awards under this announcement. Further, copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the following office: Office of Refugee Resettlement, 370 L'Enfant Promenade S.W., Washington, D.C. 20447, Telephone: (202) 401–9251.

B. Forms, Certifications, Assurances, and Disclosure

1. Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The instructions and forms required for submission of applications are included. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

The two letter designations for the Categories of the Standing Announcement Discretionary Grants are: category 1, RP; category 2, RU; category 3, RO; category 4, RB; category 5, RM; and category 6, RE. The applicant should identify each application accordingly on the face page of the SF 424, item 11.

2. Budget and Budget Justification—Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. According to the instructions for completing the SF–424A and the preparation of the budget and budget justification, ''Federal resources'' refers only to the ACF/ORR grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel: Costs of employee salaries and wages. Identify the project director and for each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies.

Fringe Benefits: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF/ORR-sponsored workshops should be detailed in the budget.

Equipment: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies: Costs of all tangible personal property other than that included under the Equipment category. Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, etc. Contracts with secondary recipient organizations, including delegate agencies (if applicable), should be included under this category.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if procurement without competition is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs: This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

An applicant proposing to charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the agreement, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income: The estimated amount of income, if any, expected to be generated from this project.

Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information. Program income generated under any Federal grant resulting from this announcement shall be used in one of the following ways: (1) deducted from the total project costs, (2) under cost-sharing used for allowable costs to satisfy this requirement, (3) added to funds committed to the project and used to further program objectives. For 1 or 2, the income should be used for current costs unless the awarding agency authorizes deferral to a later period. For 3, there is no requirement to request prior approval to defer use of program income for a later period.

Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

3. Applicants must provide the following certifications. Copies of the forms and assurances are located at the end of this announcement.

a. Certification regarding lobbying if your anticipated award exceeds $100,000.

b. Certification regarding environmental tobacco smoke. By signing and submitting the applications, applicant provides certification that they will comply with the requirements of the Pro-Children Act of 1994 (P.L. 103–227, Part C—Environmental Tobacco Smoke) and need not mail back the certification with the application.

c. Certification regarding debarment, suspension, and other Ineligibility. By signing and submitting the applications, applicant provides certification that

they are not presently debarred, suspended or otherwise ineligible for this award and therefore need not mail back the certification with the application.

d. Drug-Free Workplace Act of 1988.

C. Deadline

1. Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date or sent on or before the deadline date and received by ORR in time for the independent review. Applications should be mailed to: Office of Refugee Resettlement, Administration for Children and Families, Division of Community Resettlement, 370 L'Enfant Promenade, S.W., Sixth Floor, Washington, D.C. 20447, *Attention: Standing Competition*.

Applicants must ensure that a legibly dated U.S. Postal Service postmark, or a legibly dated, machine produced postmark of a commercial mail service appears on the envelope/package containing the application(s). An acceptable postmark from a commercial carrier is one which includes the carrier's logo/emblem and shows the date the package was received by the commercial mail service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the Administration for Children and Families, Office of Refugee Resettlement, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

4. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ACF.

D. Nonprofit Status

Applicants other than public agencies must provide evidence of their nonprofit status with their applications. Any of the following is acceptable evidence: (1) A copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code; or (2) a copy of the currently valid IRS tax exemption certificate.

E. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.''

As of June 15, 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau.

All remaining jurisdictions participate in the E.O. process and have established Single Points of Contact (SPOCs). A list of the Single Points of Contact for each State and Territory is included as Appendix A of this announcement.

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them to the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that ORR can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Community Resettlement, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

F. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations, including program announcements. All information required by this is covered under the OMB Approval No. 0970–0139, ACF Uniform Project Description.

G. Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

H. Reporting Requirements

Grantees are required to file the Financial Status Report (SF–269) semi-annually and Program Progress Reports on a quarterly basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities.

Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The official receipt point for all reports and correspondence is the ORR Division of Community Resettlement. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Project Officer named in the award letter. The mailing address is: 370 L'Enfant Promenade S.W., Sixth Floor, Washington, D.C. 20447.

A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

(The Catalog of Federal Domestic Assistance [CFDA] number assigned to this announcement is 93.576)

Dated: December 1, 1997.

Leonard Glickman,

Acting Director, Office of Refugee Resettlement.

OMB State Single Point of Contact Listing

ARIZONA

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–1305

ARKANSAS

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

CALIFORNIA

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

DELAWARE

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

DISTRICT OF COLUMBIA

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

FLORIDA

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

GEORGIA

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 565–3855 or (404) 656–3829, FAX: (404) 656–7938

ILLINOIS

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

INDIANA

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

IOWA

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

KENTUCKY

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

MAINE

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

MARYLAND

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–3265, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

MICHIGAN

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266

MISSISSIPPI

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

NEVADA

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

NEW HAMPSHIRE

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

NEW MEXICO

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

NORTH CAROLINA

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

NORTH DAKOTA

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

OHIO

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

RHODE ISLAND

Kevin Nelson, Review Coordinator, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA

Rodney Grizzle, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 331, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0356

TEXAS

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

UTAH

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

WEST VIRGINIA

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

WISCONSIN

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

WYOMING

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capitol, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307) 632–3909

TERRITORIES

GUAM

Mr. Giovanni, T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

PUERTO RICO

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

NORTH MARIANA ISLANDS

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Northern Mariana Islands 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, FAX: (670) 644–2272

VIRGIN ISLANDS

Nelson Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC DOES NOT HAVE A ''STATE SINGLE POINT OF CONTACT.'' STATES WITHOUT ''STATE SINGLE POINTS OF CONTACT'' INCLUDE: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Palau, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes in the list will only be made upon formal question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

BILLING CODE 4184–01–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)_____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184–01–C

Instructions For The SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the Address Provided By The Sponsoring Agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State, if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (.e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities.)

13. Self-explanatory.

14. List of applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES					
6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

SECTION C — NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

BILLING CODE 4184-01-C

Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For *new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project.

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.c. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (41 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

BILLING CODE 4184–01–P

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements
(Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 7. If the workplace identified to the agency changes during the
performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo
contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1)The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug
abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

BILLING CODE 4184–01–C

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification is this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact that person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a low tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other

remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BILLING CODE 4184–01–P

OMB No. 9999-0020
OMB No. 0925-0418
Approved for use through 12/31/97

Protection of Human Subjects
Assurance Identification/Certification/Declaration
(Common Federal Rule)

POLICY: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See Section 101(B) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification of appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule.

Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency or the Department of Health and Human Services (HHS) should submit certification of IRB review and ap- proval with each application or proposal unless otherwise advised by the De- partment or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type	2. Type of Mechanism	3. Name of Federal Department or Agency and, if known, Application or Proposal Identification No.
☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION	☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP ☐ COOPERATIVE AGREEMENT ☐ OTHER: _____	
4. Title of Application or Activity		5. Name of Principal Investigator, Program Director, Fellow, or Other

6. Assurance Status of this Project *(Respond to one of the following)*

☐ This assurance, on file with the Department of Health and Human Services, covers this activity:

Assurance identification no. M-_____ IRB identification no._____

☐ This Assurance, on file with *(agency/dept.)* _____, covers this activity:

Assurance identification no. _____ IRB identification no._____ *(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ *Exemption status:* Human subjects are involved, but this activity qualifies for exemption under Section 101 (b), paragraph _____.

7. Certification of IRB Review *(Respond to one of the following IF you have an Assurance on file)*

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations and subparts on *(date)*_____ by: ☐ Full IRB Review or ☐ Expedited Review.

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.		10. Name and Address of Institution
11. Phone No. *(with area code)*	12. Fax No. (with area code)	
13. Name of Official		14. Title
15. Signature		16. Date

Authorized for local reproduction

Public reporting burden for this collection of information is estimated to average 5 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: PHS Reports Clearance Officer (9999-0020 and 0925-0418), Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201. Attn: PRA. *Do not return the completed form to this address.*

OPTIONAL FORM 310 (Rev. 1-95)
Sponsored by HHS/PHS/NIH

BILLING CODE 4184–01–C

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report_____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* Congressional District, *if known*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number,** *if applicable:*	
8. Federal Action Number, ***if known*:**	**9. Award Amount,** ***if known*:** $	
10. a. **Name and Address of Lobbying Registrant** *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
Items 11 through 15 are deleted.		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded soley by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 97–32073 Filed 12–8–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–62159]

Utah; Propose Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease VTU–62159 for lands in Duchesne County, Utah, was timely filed and required rentals accruing from November 1, 1997, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–62159, effective November 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 97–32153 Filed 12–8–97; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF INTERIOR

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Wednesday, December 17, 1997; 1:30–4:00 p.m.

Address: Zephyr Park Community Center, Schadt Avenue, Whitehall, PA 18052.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Pub. L. 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: December 2, 1997.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 97–32153 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 29, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 24, 1997.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Sitka Borough-Census Area

Sitka US Post Office and Court House,
100 Lincoln St.,
Sitka, 97001584

Yukon-Koyukuk Borough-Census Area

Sourdough Inn,
Jct. of First and Sled Sts.,
Fort Yukon, 97001585

ARIZONA

Yavapai County

Clarkdale Historic District,
Roughly along Main St., roughly bounded by Verde R. including industrial smelter site.,
Clarkdale, 97001586

CALIFORNIA

Calaveras County

Copperopolis Armory,
695 Main St.,
Copperopolis, 97001588

Copperopolis Congregational Church,
411 Main St.,
Copperopolis, 97001587

FLORIDA

Leon County

Jacksonville, Pensacola and Mobile Railroad Company Freight Depot,
918 Railroad Ave.,
Tallahassee, 97001589

MONTANA

Ravalli County

Summers—Quast Farmstead,
1288 Eastside Hwy.,
Corvallis, 97001590

NEW MEXICO

Bernalillo County

Enchanted Mesa Trading Post
(Route 66 Through New Mexico MPS),
9612 Central Ave. SE,
Albuquerque, 97001595

Hilltop Lodge
(Route 66 Through New Mexico MPS),
5410 Central Ave. SW,

Albuquerque, 97001597

Horn Oil Co. and Lodge
(Route 66 through New Mexico MPS),
1720 Central Ave. SW,
Albuquerque, 97001591

La Puerta Lodge
(Route 66 Through New Mexico MPS),
9710 Central Ave. SE,
Albuquerque, 97001596

Sandoval County

Santo Domingo Indian Trading Post
(Route 66 Through New Mexico MPS),
Rt. 66 crossing of AT&SF RR tracks at Domingo,
Domingo, 97001592

NORTH CAROLINA

Transylvania County

St. Philip's Episcopal Church
(Transylvania County MPS),
317 E. Main St.,
Brevard, 97001594

Wake County

Royal Baking Company, Former
3801 Hillsborough St.,
Raleigh, 97001593

TEXAS

Atascosa County

Atascosa County Courthouse,
Circle Dr.,
Jourdanton, 97001598

Harris County

Eppes, Ned A. and Linda S., House,
5322 Institute Ln.,
Houston, 97001599

WYOMING

Converse County

Jenne Block,
301 Center St.,
Douglas, 97001600

Sweetwater County

Slovenski Dom,
513 Bridger Ave.,
Rock Springs, 97001601.

[FR Doc. 97–32098 Filed 12–8–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Flow Objectives for the Vernalis Adaptive Management Plan (VAMP), California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement/environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 as amended, the Bureau of Reclamation (Reclamation), in cooperation with the U.S. Fish and Wildlife Service (Service), proposes to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) on the water made available on the San Joaquin River and its tributaries to provide pulse flows at Vernalis during April and May and to help meet anadromous fish flow objectives. The San Joaquin River Group Authority (Authority) will be the lead agency under the California Environmental Quality Act.

Reclamation proposes to contract for water on the San Joaquin River and its tributaries under Pub. L. 102–575, Title 34, Section 3406(b)(3) of the Central Valley Project Improvement Act (CVPIA). The water would be made available to Reclamation from the San Joaquin River Group Authority (Authority). The purpose of the proposed project is to use the water to provide a pulse flow at Vernalis during April and May and other flows identified by the CVPIA water acquisition program. This water is needed to support the Vernalis Adaptive Management Plan (VAMP) which is being implemented to provide protective measures for fall-run chinook salmon and to gather scientific information on the effects of various flows in the lower San Joaquin River, Central Valley Project and State Water Project export pumping rates, operation of a fish barrier, and survival of salmon smolts through the Delta. Water is needed also to provide environmental benefits in the lower San Joaquin River, San Joaquin River tributaries, and Delta. The EIS/EIR will address potential impacts to the environment which may result from the modified flows in the San Joaquin River and its tributaries.

Reclamation and the Authority seek public input on alternatives, concerns, and issues to be addressed in the EIS/EIR. A series of scoping meetings will be held to receive oral and written comments.

DATES: Public scoping meetings will be held as follows:

- Tuesday, January 6, 1998, from 1:00 to 3:00 p.m. at the Miller-Lux Building, First Floor, 830 Sixth Street, Los Banos, California, 93635.
- Wednesday, January 7, 1998, from 1:00 to 3:00 p.m. at the Fairfield Community Center, Studio C, 1000 Kentucky Street, Fairfield, California, 94533.
- Thursday, January 8, 1998, from 6:00 to 8:00 p.m. at the Modesto Irrigation District, (South Entrance) Multi-Purpose Room, Second Floor, 1231 Eleventh Street, Modesto, California, 95354.

Written comments on the project scope should be sent to Reclamation by January 13, 1998. Comments received after this date will be considered, but will not be included in the resulting scoping report.

The draft EIS/EIR should be available for public review in September or October 1998.

ADDRESSES: Written comments on the project scope should be sent to Michael Delamore, Program Manager, South-Central California Office, 2666 N. Grove Industrial Drive, Suite 106, Fresno, California, 93727; or Dan M. Fults, Friant Water Users Authority, 1521 I Street, Sacramento, California, 95814.

FOR FURTHER INFORMATION CONTACT: Mr. Delamore, telephone (209) 487–5039, fax (209) 487–5130; or Mr. Fults, telephone (916) 441–1931, fax (916) 441–1581.

SUPPLEMENTARY INFORMATION: In May 1995, the State Water Resources Control Board (State Board) adopted a Water Quality Control Plan (WQCP) for the San Francisco/Sacramento-San Joaquin Delta Estuary. The WQCP included water quality and flow objectives pertaining to the San Joaquin River basin. During 1997, Reclamation purchased water within the San Joaquin River system to help meet the WQCP's defined flow objectives. The science supporting the flow objective for the San Joaquin River as measured at Vernalis has been disputed. In an effort to clarify the science for the flow objective and resolve the dispute, the San Joaquin River interests collaborated to identify feasible actions to protect the San Joaquin River's fish resources and to implement the State Board's fishery objectives. This collaboration led to a scientifically-based adaptive fishery management plan known now as VAMP. This VAMP Agreement provides the basis for the project information described below.

The VAMP will be implemented through experimental flows on the San Joaquin River and export pumping flow rates with an Old River fish barrier during the 1-month period each year, from approximately April 15 to May 15, in the spring of each year. Additional attraction flows are targeted for October. The experimental design of the VAMP will use the water identified by this action in various regimes, depending upon smolt survival and passage through the Delta.

In addition to the total water from the VAMP Agreement, an additional amount of water may be contracted for release at any time during the year. The EIS/EIR will analyze the impacts of a maximum amount of water in any year over the period 1999–2009 for release to the San Joaquin River and its tributaries.

(Specific quantities of water from the VAMP Agreement and from willing sellers are currently under negotiation and will be identified in the EIS/EIR.)

Issues or resources that may be affected by the proposed project that will be evaluated in the EIS/EIR are the following: surface water, groundwater, biological resources (vegetation, wildlife, fisheries), land use (including agriculture), recreation, cultural resources, and environmental justice. Impacts to other resources would be evaluated if public scoping determines the need for such an evaluation. Cumulative impacts and other short-term and long-term impacts required by CEQA and NEPA will be evaluated as well.

The Draft EIS/EIR will analyze a range of alternatives that include, but are not limited to, the no-action alternative and other flow regimes in support of VAMP and related San Joaquin River flows under Section 3406(b)(3). The impact analysis may include combinations of one or more alternatives as well as other alternatives identified during the public scoping process. Alternatives to the proposed project have not yet been identified and will depend upon the results of public scoping. Alternatives to be evaluated in depth in the EIS/EIR need to be consistent with the project purpose described above.

Dated: December 2, 1997.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 97–32155 Filed 12–8–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Community Policing to Combat Domestic Violence progress reports.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 9, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Community Policing to Combat Domestic Violence Progress Reports.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local governments, private non-profit organizations, individuals, education institutions, hospitals, and private commercial organizations (if legislation allows). Other: None.

The information collected is used to determine grantee progress on its Community Policing to Combat Domestic Violence grant. Completion of such report is a condition of the grant award. Upon receipt and review, the agency will notify the grantee if it is not in compliance with the terms and conditions of its grant award under this program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 336 respondents at 8 hours per response. The information will be collected once from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,688 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 3, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–32148 Filed 12–8–97; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Problem Solving Partnerships progress reports.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 9, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

If your have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Problem Solving Partnerships Report on Analysis.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local governments, private non-profit organizations, individuals, education institutions, hospitals, and private commercial organizations (if legislation allows). Other: None.

The information collected is used to determine grantee progress on its Problem Solving Partnerships (PSP) Grant. Completion of such report is a condition of the PSP grant award. Upon receipt and review, the agency will notify the grantee if it is not in compliance with the terms and conditions of its grant award under this program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 470 respondents at 8 hours per response. The information will be collected once from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 3,760 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 3, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–32149 Filed 12–8–97; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for engaging employers in State and local School-to-Work (STW) systems through efforts undertaken by industry groups and trade associations.

SUMMARY: *This notice contains all of the necessary information and forms needed to apply for grant funding.* The Departments of Labor and Education jointly invite proposals for approximately 3—5 new awards in FY 1998, as authorized under section 403 of the School-to-Work Opportunities Act of 1994 (the Act). These awards will provide support to industry groups and trade associations to undertake outreach, technical assistance, and other activities to engage and to build the capacity of employers to participate in STW systems. As a result of the products developed and activities carried out, awardees will be asked to provide clear, quantifiable evidence that they are significantly increasing the numbers of employers in their industry who are participating in STW activities.

DATES: Applications for grant awards will be accepted commencing December 9, 1997. The closing date for receipt of applications is January 23, 1998, at 4 P.M., (Eastern Time) at the address below. Telefacsimile (FAX) applications *will not be honored.*

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 98–003, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C., 20210.

FOR FURTHER INFORMATION CONTACT: Division of Acquisition and Assistance, telephone: (202) 219–8694 (this is not a toll free number). This solicitation will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Home Page.

Industry/Trade Association Solicitation

I. Purpose

To invite proposals to support industry and trade associations to undertake outreach, technical assistance, and other activities to engage and to build the capacity of employers to participate in STW systems.

II. Background

The School-to-Work Opportunities Act was signed into law by the President on May 4, 1994. Jointly administered by the Departments of Labor and Education, this Act is a new approach to education that seeks to better prepare all American youth for careers in high skill, high wage jobs and to strengthen the linkages between what is learned in school with work. Under the Act, venture capital grants are provided to States and local communities to undertake systemic reform. Grants are for a limited duration with the Federal investment declining over time. These investments are intended to support the one-time costs of States and local communities to restructure learning experiences for all students. The Act also provides a set-aside of funds for national activities to support School-to-Work system-building nationwide. These funds are used for technical assistance and capacity building, for outreach, and for research and evaluation. Section 403 of the Act, relating to training and technical assistance, specifically directs the Secretaries to ''work in cooperation with * * * employers and their associations * * * to increase their capacity to develop and implement effective School-to-Work programs.''

III. Statement of Work

Employer Participation in STW

Changes in our economy, technology and global competition are driving forces behind efforts to improve the academic performance and career preparedness of today's youth. Among its purposes, the National School-to-Work Opportunities Act was enacted to: ''utilize workplaces as active learning environments in the educational process by making employers joint partners with educators in providing opportunities for all students to participate in high-quality, work-based learning experiences.'' Work-based learning is one of the three key components within

a STW system (school-based learning and connecting activities are the other two). Thus, employer participation is critical for the implementation and sustainability of STW systems. Employers participate in STW systems through a number of different activities involving students, teachers and with State and local governing bodies. *The Employer Participation Model,* published by the National Employer Leadership Council, outlines more than 50 different opportunities for employer involvement in STW. States and local communities are actively working to engage employers in becoming partners and active participants within their STW systems.

Status of Employer Investments

Prior to this year, the two Departments through the National School-to-Work Office have made a number of investments to support employer knowledge and participation in aspects of emerging STW systems. A major investment included support for the establishment and development of the National Employer Leadership Council (NELC), the mission of which has been to enlist the leadership of highly visible CEOs of major companies in order to promote STW at the highest levels of corporate business. Another significant investment included one through an existing ETA grant to the National Alliance of Business (NAB). The purpose of this project was to promote participation in STW through ETA's workforce development infrastructure featuring a partnership comprised of NAB, NELC, the Association of Private Industry Councils, and the National Employer Council. The National STW office also invested in outreach activities and specific publications targeted to business entities and employers. Additional investments have been made in the research and evaluation area to collect data on employer participation. Such data has been collected from three sources: (1) The National Employer Survey conducted by the University of Pennsylvania's Center on Educational Quality of the Workforce, (2) the School to Work progress measure system, and (3) The Bureau of Labor Statistics' National Longitudinal Survey of Youth Data Collection.

There is preliminary information that supports the notion that the investments made to date on employer participation are having a modest impact, and that there is an extremely long way to go before employer participation can be considered at scale and sufficiently sustainable. The recently released evaluation of STW work systems conducted by Mathematica Policy Research revealed that employers are playing an active role in local partnerships, participating widely in governing boards and in about a quarter of the cases are actually chairing these bodies. They are offering varied forms of work based learning opportunities, hosting teacher internships and contributing to curriculum development. However, according to the Mathematica report, partnerships face major challenges to recruit large numbers of employers. The report concludes that ''Employer recruiting will have to expand participation manyfold beyond 1996 levels if the goals States are setting for workplace activity are to be realized.''

Other research such as the National Employer Leadership Survey conducted by the Center on Educational Quality of the Workforce suggests that employers, under the right circumstances are more than ready and eager to participate in STW programs. However, as key stakeholders, contributors to and major beneficiaries of STW, they will require more clear linkages and more focused attention than has been typically occurring. It is also clear that other stakeholders, particularly educators, need to be better connected and attuned to employer perspectives.

These reports and past experience with national employer investments obviously suggest that stronger and more strategic employer investments will be necessary if the entire STW system can really be brought to scale and confidently sustained.

Industry Focus

On June 18, 1997, the National Advisory Council for STW Opportunities held its third meeting. Advisory Council members were asked to consider and provide their input to the two Departments on key issues surrounding sustainability of the STW initiative. Employer participation was identified as a key area of consideration. Among the suggestions made by Council members was for the Departments to make strategic investments with industry associations to conduct outreach and develop the capacity of employers to participate in STW systems.

The Departments agree that engaging employers by industry sectors and through industry groups and trade associations has the potential to capture a critical mass of STW business partners. In addition, when industries are partners with education they can be engaged in the design of portable, industry recognized credentials that certifies that a student has mastered skills at least as challenging as skill standards endorsed by the National Skill Standards Board or those developed under an approved State plan. Through the resources of several industry-specific business associations, affiliate networks of national and State trade associations can link to small and large employers and use the associations' infrastructures to develop the capacity of employers to participate in local STW partnerships.

Industries which already have a solid base of employer participation to build upon, provide jobs that lead to high wage careers for students; or are projected to grow are considered to be of high priority by the Departments for making strategic investments.

The Mathematica national evaluation report and occupational and industry outlook data prepared by the Bureau of Labor Statistics (BLS) data, identify industries that show significant potential for building employer participation in STW. Mathematica's national evaluation report provides baseline information on leading industries in which students have paid workplace experiences through jobs obtained either outside of school or through school. The data was collected through student surveys in eight states and identified the following industries as the leading employers of students: retail trade; manufacturing, transportation, and utilities; finance, insurance, and real estate; automotive repair; health service; and education, public administration and legal/social services. BLS data on growth industries and occupations and on industries expected to need a high number of replacement workers confirm that these are the leading industries for job opportunities and growth.

Employer Investment Categories

Reaching a critical mass of employer participation and sustaining the effort will require that both private and public sector employers are knowledgeable enough to want to participate, that there is research—both hard evidence and anecdotal examples—to demonstrate the conditions under which there is return on the investment when they participate, that employer participation is easily facilitated, that other stakeholders are ready and knowledgeable enough to partner with employers, that employers are able to influence other institutions for mutual benefit, that employers help infuse STW into other systems, and that investments in employer participation grow and leverage other resources. Based on lessons learned from previous investments, results of research and

evaluative data gathering, and the degree of employer participation required for bringing STW to scale, activities for employer engagement can be clustered around the following broad investment categories.

1. *Products and activities that enable employer participation and build a knowledge base of employers.* This includes but is not limited to those activities that address barriers to participation, provide more information to employers, organize employer events, highlight effective and best practices, and generally provide outreach to the employer community.

2. *Educating other stakeholders about business need and business culture.* Educators especially need a better grounding on how to work effectively in partnership with employers. Previous experience tells us that employer involvement becomes tenuous when they are in a ready posture to participate but schools and others are not ready to engage employers.

3. *Employers influencing institutions.* There are multiple and complex institutional entities that necessarily interact with business in STW. Policies and practices of these institutions are often out of line with business and industry need and are often inadvertently misaligned with economic trends that affect their own effectiveness. Thus, there is a need for business influence on not only education, but other initiatives.

4. *Advocating for Intermediaries.* The process of connecting schools with employers and students with employers can be time consuming and challenging given the institutional and cultural barriers described above. One successful approach has been the use of intermediary organizations that connect the two. Demonstrating and researching the features of intermediary relationships that are particularly effective in linking schools and employers will be especially valuable to bringing STW to scale. As one report states: ''Employers want a reliable intermediary much more than they want incentives.''

5. *Research.* Anecdotal stories of success and effectiveness are useful, but lack wide scale generalization. Research is needed that empirically demonstrates the benefit of employer participation in STW and those variables likely to contribute to effective employer involvement and employer return on investment.

6. *Building employer capacity.* There is a need to address industry specific needs as well as to tie STW participation into each industry's evolving skill standards. There are a host of other ways in which to flexibly address employer needs as agents of STW implementation.

While the intensity and mix of activities that will lead to scale and sustainability of employer participation is best determined on an industry-by-industry basis, the Departments believe that it is beneficial to all industries involved to coordinate efforts across industries to share lessons learned, discuss common issues and share related products. The Departments expect that successful applicants will coordinate activities and share results.

IV. Application Process

Eligible Applicants: Any Industry or Trade Association or a Nonprofit Organization in Partnership Groups

Potential applicants however, should note the Departments' priority in supporting industry groups that can demonstrate that they have a strong base of STW participation to build upon, are in growth industries, or have high potential for providing jobs that provide career pathways for new job entrants. High priority industries include: retail trade; manufacturing, transportation and utilities; finance, insurance and real estate; automotive repair; health service; and education, public administration and legal/social services. In preparing the proposal, please use the following headings and respond to the information in each of the following categories.

1. Industry and Project. Identify the industry, sponsoring association (or nonprofit organization) and title of the proposal. Provide information on the number and percentage of industry and mix (large and small) employers that will be represented by this proposal.

2. Project Proposal. Provide a detailed work plan that includes a description of the proposed activities, with accompanying time lines, and the target audiences for these activities. The offeror should demonstrate how the proposed work plan will contribute to bringing STW to scale and how it will lead to sustainability. Indicators demonstrating whether the work plan is likely to help bring STW to scale include:

- Showing the impact/usefulness at the national, state, and local levels and demonstrating an ''outreach'' effort to enhance this impact.
- Articulating how the planned activities will build linkages between the business and education communities in measurable ways, including and especially through the use of intermediary organizations.
- Connecting to emerging industry recognized skill standards.
- Identifying opportunities/activities/materials for teacher's professional development in the area of employer engagement.
- Identifying innovative approaches to work based learning that can accommodate any student.

Indicators showing whether the plan demonstrates sustainability after the federal investment has ended include:

- Providing a realistic plan for institutionalizing the endeavor beyond merely a specific project level.
- Extracting and documenting the common lessons applicable to other interested entities within a targeted industry, occupation or sector.
- Identifying both federal and non-federal funding sources that amplify and outlast the federal investment.
- Describing in business terms how it is a solution to a business problem or address a business need.
- Identifying clear roles for major stakeholder groups such as industry, organized labor, educators, parents and students.

3. *Connecting to related initiatives and entities.* The offeror should demonstrate how its proposed plan of activities will build upon existing or create new *coalitions* that maximize business involvement and participation in STW; and/or connect with other entities with similar experiences and interests to identify related products, resources, funding and interests in order to take advantage of activities in the larger arena of STW implementation; and/or involve the public and private sectors in ways that capitalize on, and connect to, existing, infrastructures and overall workforce development systems; and/or connect to existing industry skill standards development efforts, including the work of the emerging Voluntary Partnerships funded by the National Skill Standards Board.

4. *Results.* The offeror should provide specific and quantifiable outcomes that are anticipated from the proposed plan of activities. In identifying outcomes, the offeror should also explain how it will collect data, document results and use these results in ongoing working relationships with members.

5. *Capability.* The offeror should demonstrate the capability of the organization and the key staff assigned to undertake the work plan, including examples of prior related efforts that demonstrate success in providing outreach and capacity building of member firms.

V. Application Submittal

Applicants must submit an original and three (3) copies of their proposal. The applications shall be divided into two distinct parts: Part I—which contains Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix A) and ''Budget Information Sheet,'' (Appendix B). All copies of the SF 424 must have original signatures of the designated fiscal agent. Applicants shall indicate on the SF–424 the organization's IRS status. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Evaluation Criteria. No cost data or reference to price shall be included in this part of the application. Applicants must limit the program narrative section to no more than 30 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirement will not be considered.

VI. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) Was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and Federal holidays. The term ''post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

VII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date. Telegraphed and/or faxed applications will not be honored.

Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

VIII. Funding Availability and Period of Performance

The Departments expect to make up to 5 awards with a maximum total investment for these projects of $6 million. The period of performance will be for 24 months from the date the grant is awarded. The Departments may, at their option, provide additional funds for a third year at a lower level of funding, depending upon fund availability and performance of the awardee.

IX. Review Process

A careful evaluation of applications will be made by a technical review panel, who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The government may elect to award the grants with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

Evaluation Criteria

1. The extent to which the organization represents a critical mass of employers within a growth industry. (25 Points)

- Is this the lead organization for the industry?
- Is this a growth industry?
- Is this an industry in which there is already significant participation in work place experiences for teachers and/or students?
- Does the industry offer jobs that provide pathways to high wage careers?
- Is the industry and/or lead organization currently involved in the development and use of skill standards within education and training systems?

2. The extent to which the proposed plan will leverage the infrastructure of a national industry or trade association in order to reach a critical mass of employers who will participate in and benefit from STW. (25 Points)

- Is the plan specific as to the activities proposed and how these activities will result in broad employer participation?
- Does the proposal clearly demonstrate how the activities proposed will bring employer participation in STW systems to scale?
- Does the plan clearly demonstrate how the organization plans to build upon existing venues for reaching member firms?
- Are the outcomes proposed specific and realistic?

3. The extent to which the proposal addresses the system-building elements of STW. (25 Points)

- Is it clear how other critical stakeholders will be involved at the State and local levels?
- Does the proposal address how the activities will connect with State and local STW system initiatives?
- Does the proposal include how this project will relate to other industry associations and business coalitions?
- Does the proposal address the activities that connect employers with schools at the local level and how these activities will be accomplished?
- Does the proposal address how the activities will connect and leverage other national initiatives which promote industry involvement in the development and use of skill standards?

4. The extent to which the proposed plan is likely to produce sustainable employer engagement in STW after the federal investment has ended. (25 Points)

- Is there evidence of non-grant funding that amplifies the federal investment and that is likely to contribute to sustaining the project's impact?
- Is the proposal specific as to the business needs and problems that the proposed activities are designed to address?

X. Reporting Requirements

Applicants selected as grantees will be required to provide the following information:

A. To facilitate exchange of information, the Departments expect to convene grantees for meetings of approximately one-day duration on a quarterly basis. It is anticipated that half the meetings will be in Washington, D.C., and the remaining at locations to be determined.

B. Semi-annual progress reports in a format to be determined.

C. Standard Form 269, Financial Status Report Form, on a quarterly basis.

D. Final Project Report.

Signed at Washington, D.C., this 2nd day of December 1997.

Janice E. Perry,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance, SF Form 424

Appendix B: Budget Information Sheet

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

1 7 - 2 4 9

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits(Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost(Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 97–32206 Filed 12–8–97; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–166]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Power Efficiency Corporation of Hackensack, New Jersey, has applied for an exclusive license to practice the inventions described and claimed in the following patents: 4,266,177, entitled ''POWER FACTOR CONTROL SYSTEM FOR A.C. INDUCTION MOTORS''; 4,404,411 entitled ''MOTOR POWER FACTOR CONTROLLER WITH A REDUCED VOLTAGE STARTER'', 4,417,190 entitled ''CONTROL SYSTEM FOR AN INDUCTION MOTOR ENERGY RECOVERY''; 4,426,614 ENTITLED ''PULSED THYRISTER TRIGGER CONTROL CIRCUIT''; 4,433,276 entitled ''MOTOR POWER CONTROL CIRCUIT FOR A.C. INDUCTION MOTORS'', 4,459,528 entitled ''PHASE DETECTOR FOR THREE-PHASE POWER FACTOR CONTROLLER'', and 4,469,998 entitled ''THREE-PHASE POWER FACTOR CONTROLLER WITH INDIVIDUAL EMP SENSING;''; each of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Marshall Space Flight Center.

DATES: Responses to this notice must be received by February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Huntsville, Alabama 35812, telephone (205) 544–0021, fax (205) 544–0258.

Dated: December 1, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–32205 Filed 12–8–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, January 27, 1998 from 9 a.m. to 4:00 p.m. The meeting will be held at The Citadel in Charleston, SC.

—Opening/Administrative Remarks
—Status of the TSP Program
—Working Group Reports
—CPAS Program Update

Anyone interested in attending or presenting additional information to the Committee, please contact LCDR Angela Abrahamson, Manager, TSP Program Office, (703) 607–4930, or Betty Hoskin (703) 607–4932 by January 15, 1998.

Dennis Bodson,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 97–32099 Filed 12–8–97; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 30, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on December 3, 1997 to the following applicant:

Charles R. Stearns, Permit No. 98–017

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–32208 Filed 12–8–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda—National Transportation Safety Board

TIME AND DATE: 9:30 a.m., Tuesday, December 16, 1997.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6789C Pipeline Accident Report: Propane Gas Explosion, San Juan Gas Company, Inc./Enron Corp., San Juan, Puerto Rico, November 21, 1996.

6931 Safety Study: Protecting Public Safety Through Excavation Damage Prevention.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Ray Smith, (202) 314–6065.

Dated: December 5, 1997.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 97–32362 Filed 12–5–97; 2:33 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 1); Exemption

I

The Northeast Nuclear Energy Company (NNECO or licensee) is the holder of Facility Operating License No. DPR–21, which authorizes operation of Millstone Nuclear Power Station, Unit No. 1 (MNPS1), at a rated power level not in excess of 2011 megawatts (thermal). MNPS1 is a boiling water reactor located at the licensee's site in New London County, Connecticut. The license provides among other things, that it is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Sections III.D.2.(a) and III.D.3 of Option A of Appendix J to Title 10 of the *Code of Federal Regulations* (10 CFR) part 50 require the performance of local leak rate (Type B) and containment isolation valve (Type C) tests (hereafter collectively referred to as local leak rate tests (LLRT)) at intervals no greater than 2 years. By letter dated October 16, 1997, NNECO requested a one-time scheduler exemption from the requirement to perform these tests at intervals no greater than 2 years. The requested exemption would permit NNECO to delay performing the Type B and Type C tests until startup from the current Cycle 15 refueling outage (RF015). RF015 is currently scheduled to end in June 1998.

The licensee requested the exemption pursuant to 10 CFR 50.12. This regulation allows the Commission to grant exemptions from the requirements of 10 CFR part 50 which are ''[a]uthorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.'' However, the ''Commission will not consider granting an exemption unless special circumstances are present.'' Section 50.12(a)(2) lists the criteria for qualifying as a special circumstance. On the basis of the information submitted by the licensee, the NRC staff evaluated the licensee's request against 10 CFR 50.12(a)(2)(ii), which states ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

III

The underlying purpose of the requirement to perform Type B and Type C testing at intervals not to exceed 2 years is to protect the public by assuring that leakage through the primary reactor containment does not exceed allowable values. The licensee's facility is currently in an extended outage. During this outage, primary containment integrity is not required to be maintained. The primary containment, along with the emergency core cooling system, was designed to limit the offsite doses to values less than those specified in 10 CFR Part 100 in the event of a break in the primary system piping. Thus, containment integrity is required whenever the potential for loss of the primary reactor system integrity could result in significant offsite doses. Concern about such a condition exists whenever the reactor is critical and above atmospheric pressure. In this case, MNPS1 has been shut down for an extended period of time and primary containment integrity is not required. Primary containment integrity will not be required until MNPS1 restarts (currently scheduled for June 1998). As long as MNPS1 remains shut down, containment integrity is not required and, therefore, testing for containment integrity is not required to adequately protect the public. The public will continue to be adequately protected as long as the Type B and Type C testing is satisfactorily completed prior to restarting from RF015.

IV

On the basis of the above discussion, the staff finds that the licensee's request for exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security as specified in 10 CFR 50.12(a)(1). Additionally, the staff finds that application of the regulations in this particular circumstance would not serve, nor is it necessary to achieve, the underlying purpose of the rule. Therefore, the licensee's requested scheduler exemption from the 2-year testing requirements of Sections III.D.2.(a) and III.D.3 of Option A of Appendix J to 10 CFR part 50 is granted.

V

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant impact on the environment (62 FR 63736).

This exemption is effective upon issuance and shall expire when containment integrity is required for startup from the current refueling outage.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation

[FR Doc. 97–32162 Filed 12–8–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 8, 15, 22, and 29, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 8

Thursday, December 11

2:00 p.m.—Affirmation Session (public meeting)

a. Final Rule—Deliberate Misconduct by Unlicensed Persons

b. Order Denying a Motion to Quash Six Subpoenas Issued by the Office of Investigations (Contact: Bob McOsker, 301–415–1651)

2:05 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Friday, December 12

9:00 a.m.—Meeting with Northeast Nuclear on Millstone (Public meeting) (Contact: Bill Travers, 301–415–1200)

Week of December 15—Tentative

Wednesday, December 17

2:00 p.m.—Briefing on Integration and Evaluation of Results from Recent Lessons-Learned Reviews (including 50.09 Process Improvements) (public meeting) (Contact: Eileen McKenna, 301–415–2189)

3:30 p.m.—Affirmation Session (public meeting) (if needed)

Thursday, December 18

10:00 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (public meeting) (Contact: John Larkins, 301–415–7360)

Week of December 22—Tentative

There are no meetings the week of December 22.

Week of December 29—Tentative

There are no meetings the week of December 29.

* The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 4, 1997.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary.

[FR Doc. 97–32274 Filed 12–5–97; 10:27 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Ft. St. Vrain Nuclear Generating Station; Closing of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) is closing the local public document room (LPDR) for records pertaining to the Ft. St. Vrain Nuclear Generating Station located at the Weld Library District, Lincoln Park Branch, Greeley, Colorado, effective December 21, 1997.

This Library has served as the LPDR for the Ft. St. Vrain Nuclear Generating Station for 17 years. The decision to officially close the LPDR was made since the NRC has terminated the Ft. St. Vrain operating license and released the decommissioned site for unrestricted use. Therefore, effective December 21, 1997, the LPDR will be closed.

Persons now interested in information pertaining to this facility or any other NRC activity may contact the NRC Public Document Room by calling toll-free 1–800–397–4209 or writing to NRC Public Document Room, Washington, D.C. 20555–0001.

Dated at Rockville, Maryland, this 4th day of December 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 97–32161 Filed 12–8–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26788]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 3, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 28, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Conectiv, et al.

[70–9095]

Conectiv, Inc. (''Conectiv''), not currently subject to the Act,[1] Delmarva Power & Light Company (''Delmarva''), a public utility company, and its subsidiaries, Delmarva Industries, Inc., Delmarva Energy Co., and Support Conectiv, Inc. (''Support Conectiv''), all located at 800 King Street, Wilmington, Delaware 19899–0231; Delmarva Services Company, Conectiv Services, Inc., Conectiv Communications, Inc., Delmarva Capital Investments, Inc., DCI I, Inc., DCI II, Inc., Delmarva Capital Technology Co., DCTC-Burney, Inc., Pine Grove, Inc., Pine Grove Landfill, Inc., Pine Grove Hauling Company, Delmarva Capital Realty Company, Christiana Capital Management, Inc. Post and Rail Farms, Inc., Delmarva Operating Services Company, DelStar Operating Company, DelWest Operating Company, DelCal Operating Company, Conectiv Solutions, Inc., Conectiv Enterprises, Inc., and Conectiv Energy, Inc., all located at 252 Chapman Road, P.O. Box 6066, Newark, Delaware 19714; Atlantic City Electric Company (''Atlantic Electric''), a public utility holding company currently claiming an exemption from regulation under section 3(a)(1) of the Act from all provisions except section 9(a)(2), and its subsidiaries, Deepwater Operating Company, Atlantic Energy Enterprises, Inc., and Atlantic Energy International, Inc., all located at 6801 Black Horse Pike, Egg Harbor Township, New Jersey 08234; ATE Investment, Inc., Atlantic Generation, Inc., Pedrick Limited, Inc., Pedrick General, Inc., Vineland Limited, Inc., Vineland General, Inc., Atlantic Southern Properties, Inc., Atlantic Thermal Systems, Inc., Atlantic Jersey Thermal Systems, Inc., ATS Operating Systems, Inc., CoastalComm, Inc., Atlantic Energy Technology, Inc., Binghamton General, Inc., Binghamton Limited, Inc., The Earth Exchange, Inc., and Atlantic Paxton Cogeneration, Inc., all located at 5100 Harding Highway, Mays Landing, New Jersey 08330 (collectively, ''Applicants'' or ''Conectiv System''), have filed an application-delcaration under sections 6, 7, 9, 10, 12 and 13 under the Act and rules 43, 45, 46, and 54 under the Act.

Conectiv has previously filed an application-declaration with the Commission under section 9(a)(2) of the Act seeking approvals relating to the proposed acquisition by Conectiv of securities of Delmarva, and merger into Conectiv of Atlantic Energy, Inc. (''Atlantic''), parent of Atlantic Electric, (collectively, these transactions are referred to as the ''Merger''), and for other related transactions including the formation of Support Conectiv as a subsidiary service company in accordance with the provisions of rule 88 under the Act. A notice of the Merger U–1 was issued on October 3, 1997 (HCAR No. 26763). Each of the entities that will be directly and indirectly owned subsidiaries of Conectiv upon consummation of the transactions described in the Merger U–1 is referred to individually as a ''Subsidiary'' and collectively as ''Subsidiaries''.[2] Following the consummation of the Merger, Conectiv will have two utility subsidiaries, Delmarva and Atlantic Electric (the ''Utility Subsidiaries''). All of Conectiv's direct and indirect Subsidiaries, other than the Utility

[1] Conectiv will register as a holding company under the Act upon consummation of the transactions contemplated in File No. 9069 (''Merger U–1'').

[2] Applicants state that for purposes of sections in the application-declaration related to non-utility financing, guarantees, changes in capital stock of wholly-owned subsidiaries, and dividends out of capital or unearned surplus by non-utility subsidiaries, the terms ''Subsidiary'' and ''Subsidiaries'' shall also include other direct or indirect subsidiaries that Conectiv may form after the Merger with either the approval of the Commission, under the Rule 58 exemption or under Section 34 of the Act. Thus, future Rule 58 and exempt telecommunication companies (''ETCs'') are included in the term ''Subsidiaries'' for purposes of these sections.

Applicants also state that for purposes of sections in the Form U–1 related to the Money Pool, the terms ''Subsidiary'' and ''Subsidiaries'' will only include those companies specifically named on the cover and signature pages of the application-declaration and specifically exclude Conectiv Communications, Inc. and CoastalComm., Inc, both wholly-owned ETCs. Applicants further request the Commission to reserve jurisdiction over the participation in the Conectiv System Money Pool of future companies formed by Conectiv.

Subsidiaries shall be referred to as ''Non-Utility Subsidiaries.''

Applicants propose to enter into numerous types of financing transactions to meet Conectiv's capital requirements immediately following the Merger and to plan future financing. Applicants request authorization to engage in the financing transactions through December 31, 2000 (''Authorization Period'') described below.

Financings by each Applicant will be subject to the following limitations: (i) the effective cost of money on long-term debt securities will not exceed 300 basis points over comparable term U.S. Treasury securities and the effective cost of money on short-term securities will not exceed 300 basis points over the comparable term London Interbank Offered Rate; (ii) maturity of indebtedness will not exceed 50 years; (iii) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale or distribution of a security will not exceed 5% of the principal amount of the financing; and (iv) Conectiv represents that at all times during the Authorization Period its common equity will be at least 30% of its consolidated capitalization.

The proceeds from the sale of securities in external financing transactions will be used for general and corporate purposes including: (i) the financing of capital expenditures of the Conectiv System; (ii) the financing of working capital requirements of the Conectiv System; (iii) the acquisition, retirement, or redemption of existing securities; and (iv) direct or indirect investment in companies authorized under the Merger U–1 and in other rule 58 companies and ETCs.

1. Conectiv External Financing

a. *Common Stock.* Conectiv requests authorization to issue common stock, par value $0.01 per share, up to an aggregate amount of $500 million. Of this amount, Conectiv proposes that $100 million be issued as consideration for the acquisition by Conectiv or a Non-Utility Subsidiary of securities of a business (the acquisition of which is exempt under rule 58 or section 34 of the Act, or which has been authorized in the Merger U–1). Conectiv requests authorization to issue up to 10 million shares of Conectiv common stock (or options to purchase such shares) pursuant to benefit plans and the dividend reinvestment plan. The number of shares to be issued under the benefit plans will not exceed 5 million.

b. *Long-term Debt.* Conectiv requests authorization to issue long-term debt securities in an amount, when combined with the issuances of common stock (other than for benefit plans or the Conectiv Dividend Reinvestment Plan), not to exceed $500 million. The long-term debt securities would include notes, debentures and medium-term notes issued under an indenture (''Conectiv Indenture'') and/or borrowings from banks and other financial institutions.[3] Specific terms of any borrowings will be determined by Conectiv at the time of issuance and will comply with the parameters of financing authorization stated earlier.

c. *Short-term Debt.* Conectiv requests authorization to have outstanding at any one time, up to $500 million of short-term debt consisting of borrowings under a revolving credit facility with a group of banks, the issuance of commercial paper[4] and the sale of bid notes under bid-note agreements (''Bid-Note Agreements'').[5] The short-term debt will be used to refund pre-Merger short-term debt, to provide for the reissuance of pre-Merger letters of credit and to provide financing for general corporate purposes, working capital requirements and Subsidiary capital expenditures until long-term financing can be obtained.

d. *Hedging Transactions.* Conectiv requests authorization to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Conectiv would employ interest rate swaps as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization by (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, (iii) limiting the impact of changes in interest rates resulting from variable rate debt and (iv) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities.

2. Subsidiary Financing

Applicants request authorization for Delmarva to issue up to $275 million of short-term debt consisting of commercial paper, unsecured bank loans and borrowings under the Conectiv system money pool. These issuances of securities will comply with the parameters for financing described above. Any short-term borrowings by Delmarva, when combined with short-term borrowings by Conectiv, will not exceed $500 million at any time during the Authorization Period. In addition the Applicants request authorization for the Utility Subsidiaries to enter into hedging transactions of the same type and under the same conditions as those identified above for Conectiv.

3. Other Securities

The Applicants request authorization to issue other types of securities within the parameters of this Application-Declaration during the Authorization Period. The Applications request that the Commission reserve jurisdiction over the issuance of additional types of securities.

[3] Applicants state that the Conectiv Indenture will permit the issuance of a wide variety of unsecured debt securities in one or more series. The Conectiv Indenture will contain numerous variable terms, such as principal amount, interest rate, redemption terms, denominations, events of default, etc. The Conectiv Indenture contains no negative covenants or restrictions.

Borrowings from banks and other financial institutions will be unsecured debt and will rank *pari passu* with debt securities issued under the Conectiv Indenture and the Conectiv short-term Credit Facility (described in footnote 4 below).

[4] Conectiv anticipates entering into a revolving credit facility (the ''Credit Facility'') with a group of banks on or before the effective date of the Merger in order to repay existing obligations of certain Subsidiaries. A portion of the Credit Facility may be used to support letters of credit issued by Conectiv or the Subsidiaries in the ordinary course of business. Also, if a Utility Subsidiary issues commercial paper, it may be made a party to the Credit Facility as a backup for the commercial paper.

The interest rates on the Credit Facility are expected to be based on a triple option pricing formula as follows: (1) prime rate, (2) LIBOR plus a margin, or (3) CD plus a margin. Maturities on loans under the LIBOR rate option are expected to be for 1, 2, 3 or 6 months. Maturities on loans under the CD rate option are expected to be for 30, 60, 90 or 180 days. All of these loans will be evidenced by promissory notes. It is expected that the Credit Facility will contain negative covenants consistent with those covenants required by bank lenders for comparable bank facilities. The Credit Facility will be unsecured debt of Conectiv and will rank *pari passu* with debt issued under the Conectiv Indenture and any long-term securities issued directly to banks or other financial institutions.

It is anticipated that the sale of commercial paper will be in established domestic or European commercial paper markets. It will be sold to dealers at the discount rate or coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. The credit Facility will serve as backup for Conectiv's commercial paper program.

[5] Conectiv request authorization to enter into individual Bid-Note Agreements with one or more commercial banks which may or may not be lenders under the Credit Facility. The Bid-Note Agreements would permit Conectiv to negotiate with one or more banks to purchase promissory notes (''Bid Notes'') directly from Conectiv. The Bid Notes would bear interest rates comparable to or lower than, those available through other forms of short-term borrowing with similar terms requested in the application-declaration. The maturity of any Bid Note would not exceed 270 days.

4. Guarantees

Conectiv requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of Subsidiaries in an aggregate amount not to exceed $350 million. In addition, the Non-Utility Subsidiaries request authority to enter into arrangements with each other similar to those described with respect to Conectiv in an aggregate amount not to exceed $100 million. Applicants state that the debt guaranteed will comply with the parameters for financing.

5. Conectiv System Money Pool

Conectiv and the Subsidiaries request authorization to establish a Conectiv system money pool (''System Money Pool''). Conectiv may invest, but not borrow from the System Money Pool. Also, Delmarva and Atlantic Electric would be authorized to borrow up to $275 million and $250 million, respectively, from the System Money Pool.[6] No other participant in the System Money Pool would be permitted to have borrowings from the System Money Pool exceeding $25 million at any one time outstanding during the Authorization Period. Support Conectiv will administer the System Money Pool on an ''at cost'' basis. Support Conectiv will act strictly in an agency capacity, and not as principal, with regard to funds deposited in the System Money Pool by other participants.

6. Changes in Capital Stock of Wholly-Owned Subsidiaries and Dividends Out of Capital or Unearned Surplus by Non-Utility Subsidiaries

Applicants request authority to change the terms of any wholly-owned Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Conectiv or other immediate parent company. A Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval. Any action by a Utility Subsidiary would be subject to and would only be taken upon receipt of necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

In addition, Conectiv requests the flexibility to withdraw capital from a Non-Utility Subsidiary with excess funds through a dividend out of capital surplus to the full extent permitted by the law of the state where the Non-Utility Subsidiary is incorporated.

7. Financing Entities

The Subsidiaries seek authorization to organize new corporations, trusts, partnerships or other entities created for the purpose of facilitating financings. These entities will issue to third parties income preferred securities or other securities authorized or issued under an exemption. In addition, authority is requested for (i) the issuance of debentures or other evidences of indebtedness by any of the Subsidiaries to a financing entity in return for the proceeds of the financing, (ii) the acquisition by any of the Subsidiaries of voting interests or equity securities issued by the financing entity to establish any such Subsidiary's ownership of the financing entity and (iii) the guarantee by the Applicants of such financing entity's obligations.

Applicants also request that (i) Delmarva be authorized to retain Delmarva Power Financing I, a wholly-owned trust, that has issued trust preferred securities and loaned the proceeds to Delmarva and (ii) Atlantic Electric be authorized to retain Atlantic Capital I, a wholly-owned trust, that has issued trust preferred securities and loaned the proceeds to Atlantic Electric.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32170 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[6] As noted in footnote 2 above, the only Subsidiaries to be included in the System Money Pool are those companies specifically named on the cover and signature pages of the application-declaration, but specifically excluding Conectiv Communications, Inc. and CoastalComm. Inc., both wholly-owned ETCs.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22923; 812–10460]

Seligman Capital Fund, Inc., et al.; Notice of Application

December 3, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act and rule 2a–7 under the Act; (ii) sections 6(c) and 17(b) granting an exemption from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered investment companies to enter into deferred compensation arrangements with certain of their directors. The order would supersede an existing order (the ''Existing Order'').[1]

APPLICANTS: Seligman Capital Fund, Inc., Seligman Cash Management Fund, Inc., Seligman Common Stock Fund, Inc., Seligman Communications and Information Fund, Inc., Seligman Frontier Fund, Inc., Seligman Growth Fund, Inc., Seligman Henderson Global Fund Series, Inc., Seligman High Income Fund Series, Seligman Income Fund, Inc., Seligman Municipal Fund Series, Inc., Seligman Municipal Series Trust, Seligman New Jersey Municipal Fund, Inc., Seligman Pennsylvania Municipal Fund Series, Seligman Portfolios, Inc., Seligman Quality Municipal Fund, Inc., Seligman Select Municipal Fund, Inc., Seligman Value Fund Series, Inc., and Tri-Continental Corporation (collectively, the ''Funds''), J. & W. Seligman & Co., Incorporated (''Seligman''), and any registered open-end or closed-end investment companies for which Seligman or any entity controlling, controlled by, or under common control with Seligman serves as investment adviser.[2]

FILING DATES: The application was filed on December 12, 1996, and amended on May 15, 1997, and on October 27, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on December 29, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC, 20549. Applicants, c/o J. & W. Seligman & Co., Incorporated, 100 Park Avenue, New York, New York 10017, attn: Frank J. Nasta.

FOR FURTHER INFORMATION CONTACT:

[1] *Liberty Cash Management Fund, Inc.*, Investment Company Act Release Nos. 13196 (Apr. 27, 1983) (notice) and 13271 (May 25, 1983) (order).

[2] Any existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future registered investment companies that subsequently rely on the order will comply with its terms and conditions.

Lisa McCrea, Attorney Adviser (202) 942–0562 (Office of Investment Company Regulation, Division of Investment Management), or Mercer E. Bullard, Special Counsel (202) 942–0659 (Office of Chief Counsel, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act, except for Seligman Quality Municipal Fund, Inc., Seligman Select Municipal Fund, Inc. and Tri-Continental Corporation, which are closed-end management investment companies registered under the Act. Certain Funds are money market funds that are subject to rule 2a–7 under the Act. Seligman or an affiliate of Seligman serves as the investment adviser to each of the Funds.

2. Each Fund pays annual fees and meeting attendance fees to directors who are not employees of Seligman or its affiliates (''Unaffiliated Directors''). The Existing Order permits the Funds to adopt deferred compensation plans (''Plans'') for their Unaffiliated Directors. Under the Plans, Unaffiliated Directors' fees are credited to an account on the Fund's books (''Deferred Fee Account'') when the fees otherwise would have been payable. Amounts in each Deferred Fee Account bear interest at a rate equivalent to the 90-day U.S. Treasury Bill rate. Applicants request an order that would supersede the Existing Order to permit a modified deferred compensation plan (''Modified Plan'').

3. Under the Modified Plan, applicants propose an alternative rate of return for the Deferred Fee Accounts. The Unaffiliated Directors would choose a rate of return equal to either (i) the 90-day U.S. Treasury Bill rate, or (ii) the rate of return on the shares of any of the Funds (''Underlying Securities'') designated by the Director (''Investment Fund Rate'').

4. If an Unaffiliated Director chooses an Investment Fund Rate, the value of the Deferred Fee Account (or a specified portion thereof) will be periodically adjusted as if the deferred fees had been invested in the Underlying Securities. The Deferred Fee Account will be credited or charged with book adjustments representing all dividends, distributions and other earnings and all realized gains and losses and unrealized appreciation or depreciation to the same extent as if the amounts credited to an account had actually been invested in Underlying Securities.

5. The Modified Plan provides that the participating Fund will be under no obligation to the Unaffiliated Director to purchase, hold or dispose of any investments. If the Fund chooses to purchase investments to cover all or a portion of its obligations under the Modified Plan, the investments will continue to be a part of the general assets and property of the Fund.

6. A Fund (other than a money market fund) may elect to cover its obligations under a Modified Plan with its general investment assets, or by purchasing Underlying Securities. Any Fund that is a money market fund will purchase and hold Underlying Securities in an amount equal to the value of the Deferred Fee Accounts. If the Underlying Securities are not purchased, the amounts credited to the Deferred Fee Accounts will be invested as part of the Fund's general investment operations, in which case there will not be an exact match between the Fund's liability for deferred fees and the value of the Deferred Fee Account. Any mismatch will be *de minimis* in relation to the net assets of the Fund.

7. If an Unaffiliated Director dies before receiving all amounts in the Deferred Fee Account, the amounts will be paid in a lump sum to any beneficiaries designated by the Director or, in the absence of a designation, to the Director's estate. No deferred amount may be transferred or assigned by an Unaffiliated Director except by will or the laws of descent and distribution.

8. The Modified Plan will not obligate a Fund to retain an Unaffiliated Director or to pay any (or any particular level of) Director's fees to any Director. Rather, it will permit an Unaffiliated Director to elect deferral of Director's fees that she or he otherwise would receive on a current basis from each Fund. The proposed arrangement will not affect the voting rights of the shareholders of any of the Funds.

Applicants' Legal Analysis

1. Applicants request an order that would supersede a prior order under (i) section 6(c) of the Act granting an exemption from Sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) of the Act and rule 2a–7 under the Act; (ii) sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d–1 under the Act to permit applicants to enter into deferred compensation arrangements with their Unaffiliated Directors.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if an to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons discussed below, the requested relief satisfies this standard.

3. Sections 18(a) and 18(f)(1) of the Act generally prohibit registered closed-end and open-end investment companies, respectively, from issuing senior securities. Section 18(c) generally provides that registered closed-end investment companies may not have outstanding more than one class of senior security representing indebtedness. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Modified Plan does not possess the characteristics that led to concerns underlying these provisions. The Modified Plan will not induce speculative investments by any Fund or provide opportunity for manipulative allocation of a Fund's expenses and profits. Applicants expect the liabilities for deferred fees to be *de minimis* in relation to a Fund's net assets and that the Modified Plan will not affect control of any Fund.

4. Section 22(f) generally prohibits restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies unless the restriction is disclosed in the registration statement and does not contravene SEC rules and regulations. Applicants submit that the Modified Plan will clearly set forth any restriction on transferability and will not adversely affect the interests of the Unaffiliated Directors, a Fund or its shareholders.

5. Sections 22(g) and 23(a) generally prohibit registered open-end and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. Applicants believe that each Fund's obligation to make payments under the Modified Plan would not be issued for services, but in return for the Fund not being required to pay these fees on a current basis.

6. Section 13(a)(3) prohibits a registered investment company from deviating without shareholder vote from

any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend only to the Funds with a fundamental investment restriction that prohibits investments in the securities of investment companies (''Restricted Funds''). Applicants state that each Restricted Fund has a fundamental investment restriction prohibiting it from investing in securities of other investment companies, except in connection with a merger, consolidation, acquisition or reorganization, or except as permitted by the Act. Applicants believe that purchases by the Restricted Funds of shares of any other Fund under the Modified Plan will not violate the Fund's policies because the purchases serve solely to offset the Fund's liabilities under the deferred fee arrangements, and, thus, have no impact on a Fund's investment results from the perspective of the shareholders. The value of the Underlying Securities will be *de minimis* in relation to the total assets of each Restricted Fund. Each Fund will disclose in its Statement of Additional Information the existence of the deferred fee arrangements. Each Restricted Fund also will disclose that, for the limited purpose of the deferred fee arrangements, it may invest in Underlying Securities.

7. Rule 2a–7 imposes certain restrictions on the investments of money market funds that use the amortized cost method or the penny-rounding method of computing their per share price. These restrictions would prohibit each Fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption will permit the Funds to achieve an exact matching of Underlying Securities with the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect the Fund's net asset value. Applicants assert that the amounts involved in all cases will be *de minimis* in relation to the total net assets of each Fund and will have no effect on the per share net asset value of the Funds.

8. Section 17(a) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3)(C) defines the term *affiliated person* of another person to include any person controlling, controlled by, or under common control with such other person. Because the Funds share the same investment adviser, directors, and many officers, applicants believe that each Fund might be deemed to be under common control with all other Funds.

9. Applicants assert that section 17(a) is designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they are associated or to acquire controlling interests in these kinds of enterprises and other types of ''overreaching.'' Applicants believe that the purchase and sale of securities issued by the Funds under the Modified Plan will not implicate the concerns underlying section 17(a), but merely will facilitate the matching of liabilities for deferred Unaffiliated Directors' fees with the Underlying Securities that would determine the amount of a Fund's liability.

10. The SEC may exempt a proposed transaction from section 17(a) when: the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person involved, and the transaction is consistent with the policies of the investment company and with the general purposes of the Act. Applicants assert that the terms of the deferred fee arrangements are fair and reasonable and show an absence of overreaching because the purchases and sales of Underlying Securities will be made at net asset value and market prices, which are the same prices at which the Unaffiliated Directors may purchase shares of the Funds outside of the Modified Plan. Applicants believe that the relief requested satisfies the standards of sections 6(c) and 17(b).

11. Section 17(d) and rule 17d-1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. Rule 17d-1 provides that the SEC will consider whether the participation of an investment company is consistent with the provisions, policies and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants believe the Modified Plan may be construed to be a joint arrangement under section 17(d) and rule 17d-1. Applicants assert that deferral of Unaffiliated Directors' fees would have a negligible effect on each Fund's assets, liabilities, net assets and net income per share. Applicants believe that deferral of an Unaffiliated Director's fees essentially would maintain the parties, viewed both separately and in their relationship to one another, in the same position as if these fees were paid on a current basis.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the condition that, with respect to the requested relief from rule 2a-7 under the Act, any Fund that is a money market fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between the Fund's liability to pay deferred fees and the assets that offset that liability.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32169 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39387; File No. SR–DTC–97–13]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Regarding the Branch Deposit Service

December 2, 1997.

On June 30, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–97–13) 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 September 19, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC currently operates a branch deposit service (''BDS'') through which DTC participants may route securities certificates and related documentation from their branches and other satellite offices directly to DTC rather than routing them through the participants' own central locations for processing before they are deposited at DTC.[3] The rule change permits DTC to enter into contracts with individual participants to provide customized processing services

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39075 (September 12, 1997), 62 FR 49279.

[3] For a complete description of BDS, refer to Securities Exchange Act Release No. 34600 (August 25, 1994), 59 FR 45317 [File No. SR–DTC–94–05] (order approving proposed rule change).

under BDS. Under the proposed rule change, DTC will not be obligated to enter into any such contracts with participants or to offer the same terms under any such contracts to all participants. DTC has advised the Commission that it will base all fees charged for customization of BDS based on a consistently applied methodology.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should increase the use of BDS by DTC's participants. This increase in use should improve efficiency in the processing of securities certificates by eliminating most of the certificate processing responsibilities of those participants electing to use BDS and by reducing the movement of physical securities certificates. This reduction in the processing and movement of physical securities certificates also should improve efficiency by reducing the instances of erroneous processing and loss that sometimes occur with physical certificates.

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–DTC–97–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32172 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39386; File No. SR–OCC–97–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Stock Loan/Hedge System

December 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 11, 1997, The Options Clearing Corp. (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's by-laws governing OCC's stock loan/hedge system (''HEDGE system'') to eliminate the requirements with respect to the accounts in which stock loan positions must be maintained.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Base for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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

The HEDGE system is a clearing system for stock loans between OCC clearing members.[3] To date, OCC has approved only a few clearing members as stock lenders under the HEDGE system. OCC believes that the HEDGE system will have positive effects on OCC's risk profile and on the stock loan marketplace generally and would like to open the HEDGE system to a broader group of clearing members. However, OCC has determined that the HEDGE system's requirements with respect to the accounts in which stock loan positions must be maintained seriously limit clearing members' ability to use the HEDGE system.

OCC's by-laws governing the HEDGE system[4] currently treat stock loans as if they were pledges of loaned securities subject to the Commission's hypothecation rules.[5] The hypothecation rules limit the circumstances under which a broker-dealer may pledge securities carried for the account of any customer[6] and specifically prohibit broker-dealers from pledging securities carried for the account of any customer under circumstances that will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker or dealer under a lien for a loan made to such broker or dealer.[7] Accordingly, under the HEDGE system's account segregation rules, a clearing member that desires to lend stock must (1) first determine whether the stock is a customer or proprietary security; and (2) if the stock is a customer security, effect the loan through its OCC customers' account (or where permitted through its OCC market-maker's account).

According to OCC, stock loans historically have not been subject to the hypothecation rules and clearing members do not identify the stock in their ''loan boxes'' as to origin (*i.e.*, as customer or proprietary). OCC also has advised the Commission that ordinary over-the-counter stock loan transactions are not subject to the hypothecation rules. Therefore, according to OCC, clearing members that desire to loan stock through the HEDGE system find it difficult, if not impossible, to comply with the HEDGE system's account segregation requirements. OCC believes

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the test of the summaries prepared by OCC.

[3] For a complete description of the HEDGE system, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 [File No. SR–OCC–92–34] (order approving proposed rule change establishing HEDGE system).

[4] OCC By-Laws, Article XXI, Section 5.

[5] 17 CFR 240.8c–1 and 240.15c2–1.

[6] For purposes of the hypothecation rules, the term ''customer'' includes registered broker-dealers so long as they are not affiliated in specified ways with the broker-dealer effecting the pledge. 17 CAR 240.8c–1(b)(1), 240.15c2–1(b)(1). References to ''customers'' and ''non-customers'' herein are based on the definition in the hypothecation rules.

[7] 17 CAR 240.15c2–1(a)(2). *See also* 17 CFR 240.8c–1(a)(2) (providing the same requirements as Rule 15c2–1(a)(2) except that its scope is limited to exchange members and brokers and dealers that transact business through exchange members.

that clearing members are unlikely to change their systems just to be able to use the HEDGE system. As a result, OCC does not expect to be able to achieve broad-based participation in the HEDGE system with its current account segregation requirements.

OCC has determined that there is no legal reason for OCC's by-laws to treat stock loans under the HEDGE system as hypothecations. Therefore, OCC has concluded that it may eliminate the HEDGE system's account segregation requirements for stock loans without violating or causing clearing members to violate the Commission's hypothecation rules.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[8] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any material impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–11 and should be submitted by December 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32171 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78q–1(b)(3)(A).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39382; File No. SR–Phlx–97–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating To Adopting a Definition of ''Foreign Broker-Dealer'' Into Its Options Rules

December 2, 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 November 3, 1997,[3] the Philadelphia Stock Exchange, Inc. (''Phlx'') 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 Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is proposing to adopt a definition of ''foreign broker-dealer,'' which will treat such broker-dealers like their U.S. broker-dealer counterparts, thus precluding foreign broker-dealers from receiving treatment as customers under the various option rules.

In accordance with the foregoing, the Phlx is proposing to adopt Rule 1000(b)(41) to define the term ''foreign broker-dealer'' as follows:

The term ''foreign broker-dealer'' means any person or entity that is registered, authorized or licensed, or required to be, by a foreign governmental agency or foreign regulatory organization to perform the function of a broker or a dealer in securities, or both. The terms ''broker'' or ''dealer'' mean the same as set out in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, as amended, provided that a broker or dealer may be a bank.[5] For purposes of Rules 1014, 1015, 1033 and 1080, the term broker-dealer includes foreign broker-dealers, which are not public customers.

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 Exchange 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 28, 1997, the Philadelphia Stock Exchange, Inc. amended the filing to clarify its intent that the rule filing be deemed effective upon filing pursuant to Rule 19b–4(e)(6)(iii). *See* letter from J. Keith Kessel, Counsel, Philadelphia Stock Exchange, Inc., to Mignon McLemore, Esquire, Division of Market Regulation, SEC, dated November 24, 1997.

[4] The Exchange has represented that this proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The Exchange did not provide the required five business day advance notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act. However, the Commission has determined to waive the pre-filing requirement. *See supra* note 3.

[5] Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 provide:

''(4) The term ''broker'' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.''

''(5) The term ''dealer'' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.''

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx is proposing to amend its option rules by adopting a definition of ''foreign broker-dealer'' to ensure that foreign broker-dealer orders shall receive the same treatment as U.S. broker-dealer orders for option orders on the Exchange, as opposed to customer treatment. The definition has been designed to provide an objective standard for the enforcement of applicable option rules and to substantially resemble the Pacific Exchange's definition.[6]

By ensuring that foreign broker-dealers receive the same treatment as U.S. broker-dealers, this proposed rule change shall consequently ensure that forging broker-dealers are not afforded a competitive advantage solely because they are registered outside of the U.S.[7] For instance, both foreign and U.S. broker-dealers would not receive customer treatment as specified in Rule 1015[8] regarding Quotation Guarantees, in Rule 1014[9] and the concept of priority/parity contemplated therein regarding Obligations and Restrictions Applicable to Specialists and Registered Options Traders, in Rule 1033(a)[10] regarding Size of Bid/Offer and 10-up Guarantee, and in Rule 1080[11] regarding the Phlx Automated Options Market (AUTOM) and Automatic Executive System (AUTO–X).

In consideration of the globalization of these securities markets, the customer trading and protection rules should be consistently applied so that foreign broker-dealers trading options on the Phlx do not have an unfair competitive advantage over U.S. broker-dealers. Based upon the objective nature of the proposed definition, the Phlx will be able to verify whether a person or entity is registered, authorized or licensed by a foreign governmental agency or a foreign regulatory organization to operate as a broker-dealer. Furthermore, as a member of Intermarket Surveillance Group (''ISG''), the Phlx may obtain information from other ISG members regarding the accounts of persons or entities entering orders for execution on the Phlx, including whether the order is that of a broker-dealer or a customer. The Phlx may also obtain information from foreign exchanges and foreign regulatory authorities with whom the Phlx either has an effective surveillance sharing agreement or from a foreign exchange or regulatory authority that is subject to a memorandum of understanding with the Commission that would require, upon appropriate request, that those entities provide such information to the Exchange.

By restricting foreign broker-dealers from receiving volume guarantees and gaining access to the automatic execution system, the Phlx seeks to ensure that such broker-dealers do not exhaust such procedures or facilities, which were intended for customers. Likewise, allowing Registered Options Traders (''ROTs'') to retain priority over or have parity with both foreign and U.S. broker-dealers will enhance ROTs' ability to fulfill their market making responsibilities.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, as well as, prevent the unfair discrimination among customers, issuers, brokers or dealers. Furthermore, the proposed rule change is designed to be consistent with Section 11A(a)(1)(C)(ii) of the Act in that it will promote fair competition among brokers and dealers and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule chance will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a ''noncontroversial'' rule change pursuant to paragraph (e)(6) of Rule 19b–4.[12] Consequently, the rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate, if the change (1) does not significantly affect the projection of investors of the public interest and (2) does not impose any significant burden on competition, pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and subparagraph (e)(6) of Rule 19b–4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from November 28, 1997, the date on which it was filed,[14] it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[6] *See* Securities Exchange Act Release No. 38420, (March 19, 1997); 62 FR 14488, (March 26, 1997) (order approving SR–PSE–96–46).

[7] A non-broker-dealer customer executing a trade through a foreign broker-dealer shall receive treatment as a customer.

[8] Rule 1015(a)(viii) provides in relevant part that ''floor brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible floor broker must advise the crowd of that fact prior to bidding/offering.''

[9] Rule 1014(g)(i) provides in relevant part that ''for purposes of this rule, an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a member broker-dealer. Orders of controlled accounts must yield priority to customer orders, but not to other controlled account orders.

[10] Rule 1033(a) provides in relevant part that ''the Exchange may require that specialists and ROTs be responsible for ensuring that public orders are filled to a minimum depth of ten contracts at the best quoted bid or offer.''

[11] Rule 1080(b)(i) provides in relevant part that ''for purposes of AUTOM, an agency order is an order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer or any account in which a broker-dealer has any direct or indirect interest.'' Rule 1080(c) provides in relevant part that ''AUTO–X is a feature of AUTOM that automatically executes public customer market orders up to the number of contracts permitted by the Exchange. AUTOM orders not eligible for AUTO–X are executed manually.''

[12] 17 CFR 240.19b–4(e)(6).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] The thirty day delayed implementation date is triggered from the most recent amendment to the filing. *See* Securities Exchange Act Release No. 35123 (Dec. 20, 1994); 59 FR 66602 (Dec. 28, 1994).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–50 and should be submitted by December 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32103 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

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 February 9, 1998.

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: ''SBIC Financial Reports.''
Type of Request: Extension of a currently approved collection.
Form No: 468.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 305.
Annual Burden: 5,185.

Title: ''Portfolio Financing Report.''
Type of Request: Extension of a currently approved collection.
Form No: 1031.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 2,100.
Annual Burden: 420.

Comments: Send all comments regarding these information collections to Cathy Fields, Program Analyst, Office of Investment Division, Small Business Administration, 409 3rd Street, S.W., Suite 6300, Washington, D.C. 20416. Phone No: 202–205–6512.

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 estimate, and ways to enhance the quality.

Title: ''Application Forms for the 8(A) Program.''
Type of Request: Extension of a currently approved collection.
Form No: 1010B-Prop., 1010B-Part., 1010B-Corp.
Description of Respondents: Economically and Socially Disadvantaged Individuals.
Annual Responses: 1.
Annual Burden: 55,000.

Title: ''Program Evaluation SBA 7 (A) Loan Program.''
Type of Request: Extension of a currently approved collection.
Form No: N/A.
Description of Respondents: 7(A) Loan Applications.
Annual Responses: 1,700.
Annual Burden: 312.

Comments: Send all comments regarding these information collections to Arthur Collins, Assistant Administrator, Office of Program Development, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202–205–6416.

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 estimate, and ways to enhance the quality.

Dated: December 3, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–32202 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2991]

State of Florida

Osceola County and the contiguous Counties of Brevard, Highlands, Indian River, Lake, Okeechobee, Orange, and Polk in the State of Florida constitute a disaster area as a result of damages caused by a fire which occurred on November 14, 1997 in the Highway 192 Flea Market in the City of Kissimmee. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 26, 1998 and for economic injury until the close of business on August 26, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.625%.

Homeowners without credit available elsewhere 3.812%.

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 7.125%.

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere 4.000%.

The number assigned to this disaster for physical damage is 299105 and for economic injury the number is 967100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 26, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–32200 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2992]

State of Florida

Orange County and the contiguous Counties of Brevard, Lake, Osceola, Polk, and Seminole in the State of Florida constitute a disaster area as a result of damages caused by a fire which occurred on November 17, 1997 in the East Colonial Flea Market in Orange County. Applications for loans for physical damage may be filed until the close of business on January 26, 1998 and for economic injury until the close of business on August 26, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.625%.

Homeowners without credit available elsewhere: 3.812%.

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: 7.125%.

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%.

The number assigned to this disaster for physical damage is 299205 and for economic injury the number is 967200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 26, 1997

Aida Alvarez,

Administrator.

[FR Doc. 97–32201 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of license of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated October 24, 1997, the United States Small Business Administration hereby revokes the license of 767 Limited Partnership, a New York limited partnership, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0464 issued to 767 Limited Partnership on June 18m 1984 and said license is hereby declared null and void as of October 24, 1997.

United States Small Business Administration

Dated: December 2, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32197 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated August 25, 1997, the United States Small Business Administration hereby revokes the license of The Hanover Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0102 issued to The Hanover Capital Corporation on June 22, 1961, and re-issued on May 11, 1987, and said license is hereby declared null and void as of September 9, 1997.

United States Small Business Administration

Dated: November 25, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32199 Filed 12–08–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California, entered July 23, 1997, the United States Small Business Administration hereby revokes the license of LaSung Investment and Finance Company, a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–5251 issued to LaSung Investment and Finance Company on March 7, 1980 and said license is hereby declared null and void as of July 23, 1997.

United States Small Business Administration

Dated: November 25, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32198 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Administration Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of New York, dated August 4, 1997, the United States Small Business Administration hereby revokes the license of Rainbow Bridge Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–5297 issued to Rainbow Bridge Capital Corporation on June 12, 1980 and said license is hereby declared null and void as of December 2, 1997.

United States Small Business Administration

Dated: December 2, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32196 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Capital Goods (ISAC–2)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Capital Goods (ISAC 2) will hold a meeting on December 10, 1997 from 9:00 a.m. to 1:30 p.m. The meeting will be open to the public from 1:00 p.m. to 1:30 p.m. and closed to the public from 9:00 a.m. to 1:00 p.m.

DATES: The meeting is scheduled for December 10, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1859, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230,

(202) 482–0609 or Bill Daley, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 2 will hold a meeting on December 10, 1997 from 9:00 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 9:00 a.m. to 1:00 p.m. The meeting will be open to the public and press from 1:00 p.m. to 1:30 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 97–32114 Filed 12–8–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–105]

Termination of Section 302 Investigation: Practices of the Government of Turkey Regarding the Imposition of a Discriminatory Tax on Box Office Revenues

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination and monitoring.

SUMMARY: On June 12, 1996, the United States Trade Representative (USTR) initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), with respect to certain acts, policies and practices of the Government of Turkey that may result in the discriminatory treatment of U.S. films in Turkey. Following consultations with the United States under the auspices of the World Trade Organization (WTO), Turkey agreed to equalize any tax imposed on box office receipts from the showing of domestic and imported films. Having reached a satisfactory resolution of the issues under investigation, the USTR has determined to terminate this section 302 investigation and monitor implementation of the agreement under section 306 of the Trade Act.

EFFECTIVE DATE: This investigation was terminated on December 3, 1997.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Stephen R. Fox, Deputy Director for Intellectual Property (202) 395–6864, or Geralyn Ritter, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 12, 1996, the USTR initiated an investigation under section 302(b)(1) of the Trade Act with respect to whether certain laws and regulations of the Government of Turkey affecting the taxation of box office revenues generated from the showing of foreign-origin films that may result in the discriminatory treatment of U.S. films in Turkey are actionable under section 301(a). See 61 FR 30646 of June 17, 1996. The investigation specifically considered whether Turkey's Law on Municipal Revenues (Law No. 2464) which imposes a 25% municipality tax on box office revenues generated from the showing of foreign films, but not the revenue generated from the showing of domestic films is inconsistent with Turkey's obligations under Article III of the General Agreement on Tariffs and Trade 1994 (GATT 1994), administered by the World Trade Organization (WTO). Pursuant to section 303(a) of the Trade Act, the USTR requested consultations with the Government of Turkey under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Resolution of Dispute

In consultations between the Government of the United States and the Government of Turkey on July 23, 1996 under the WTO DSU procedures, Turkey agreed to equalize, as soon as reasonably possible, any tax imposed in Turkey on box office receipts from the showing of domestic and imported films. Based on these consultations, Turkey and the United States notified the WTO Dispute Settlement Body on July 14, 1997 that they have agreed to terminate consultations on this matter and that the Untied States has formally withdrawn this matter from further attention under the provisions of the DSU. On the basis of the measures Turkey has agreed to undertake in order to provide a satisfactory resolution to the matter under investigation, the USTR has decided to terminate this section 302 investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Turkey's implementation of its obligations under Article III of the GATT 1994 with respect to taxation of box offices revenues generated by the showing of domestic and imported films.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–32174 Filed 12–8–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement—Outer Connector

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice is to extend the comment period on the Draft EIS for the Outer Connector in the Counties of Spotsylvania and Stafford from November 28, 1997, to December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. J. Bruce Turner, Transportation Planner, Federal Highway Administration, 1504 Santa Rosa Road, Suite 205, Richmond, Virginia 23229, telephone (804) 281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in conjunction with the Virginia Department of Transportation, has determined that it is in the public interest to extend the comment period for this draft environmental impact statement.

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on November 26, 1997.

J. Bruce Turner,

Transportation Planner, Richmond, Virginia.

[FR Doc. 97–32102 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Community Reinvestment Act Regulations (12 CFR Part 563e).

DATES: Written comments should be received on or before February 9, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0012. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Theresa Stark, Compliance Policy Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7054.

SUPPLEMENTARY INFORMATION:

Title: Community Reinvestment Act Regulations (12 CFR 563e).

OMB Number: 1550–0012.

Form Number: N/A.

Abstract: This information collection is required by the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*). The public and OTS use the information to assess a thrift's community lending record.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,231.

Estimated Time Per Respondent: 16.1 average hours.

Estimated Total Annual Burden Hours: 1,982 average hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32095 Filed 12–8–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Minimum Security Devices.

DATES: Written comments should be received on or before February 9, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0062. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Larry Clark, Compliance Policy Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5628.

SUPPLEMENTARY INFORMATION:

Title: Minimum Security Devices.

OMB Number: 1550–0062.

Form Number: N/A.

Abstract: The Bank Protection Act and OTS implementing regulations require savings associations to establish security devices and procedures. Written security program allows OTS to evaluate whether savings associations have adopted policies and procedures to ensure compliance with law and regulations.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1231.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,464 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32096 Filed 12–8–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Application for Issuance of Subordinated Debt Securities.

DATES: Written comments should be received on or before February 9, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0030. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

Copies of the Form with instructions are available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days or from PubliFax, OTS'' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Application for Issuance of Subordinated Debt Securities.

OMB Number: 1550–0030.

Form Number: OTS Form 1344.

Abstract: The application provides OTS with the information needed to determine if a proposed issuance of securities will benefit the thrift institution or create an unreasonable risk to the Savings Association Fund.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 46 average hours.

Estimated Total Annual Burden Hours: 228 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32097 Filed 12–8–97; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 62, No. 236

Tuesday, December 9, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-85-000]

Texas Eastern Transmission Corporation; Notice of Application for Abandonment

Correction

In notice document 97–30886 beginning on page 62767, in the issue of Tuesday, November 25, 1997, the Docket number is corrected to read as set forth above.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 29-2B, Certification of Transport Category Rotorcraft

Correction

In notice document 97–30358 appearing on page 61859 in the issue of Wednesday, November 19, 1997, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

Correction

In notice document 97–31329 beginning on page 63603 in the issue of Monday, December 1, 1997, make the following correction:

On page 63604, in the 3rd column, under the heading ''**VAOPGCPREC 28-97''** and the subheading ''*Held*'', the 10th line should read ''Effective Date: July 24, 1993''.

BILLING CODE 1505-01-D

federal register

Tuesday
December 9, 1997

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I

Federal Acquisition Regulations (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter I

Federal Acquisition Circular 97–03; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–03. Each rule follows this document in the order listed below. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, 202) 501–4755. Please cite FAC 97–03 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 97–03 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I	Part 30 Deviations	97–014	Nelson.
II	Information Technology Management Reform Act of 1996	96–319	Nelson.
III	Final Overhead Settlement	95–017	Klein.
IV	Reorganization of FAR Part 13, Simplified Acquisition Procedures	94–772	Linfield.
V	Reporting Trade Sanction Exemptions	97–021	Linfield.
VI	New Mexico Gross Receipts and Compensating Tax	97–018	Moss.
VII	Compensation of Certain Contractor Personnel	96–325	Nelson.
VIII	Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond.	95–032	Nelson.
IX	Travel Reimbursement (Interim)	97–007	Nelson.
X	Protests to GAO	97–009	O'Neill.
XI	Novation and Related Agreements	95–034	Klein.
XII	Commercial Bills of Lading, Small Package Shipments	97–017	Klein.
XIII	Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance	96–022	Klein.
XIV	Technical Amendments		

Item I—Part 30 Deviations (FAR Case 97–014)

This final rule amends FAR 1.402 to remove the prohibition against authorizing deviations from FAR part 30, Cost Accounting Standards Administration, except for subsections 30.201–3 and 30.201–4, or the Cost Accounting Standards Board rules and regulations.

Item II—Information Technology Management Reform Act of 1996 (FAR Case 96–319)

The interim rule published as Item I of FAC 90–41 is converted to a final rule. This rule implements the Information Technology Management Reform Act of 1996 (Division E of Pub. L. 104–106). The final rule differs from the interim rule in that it makes a clarifying revision to paragraph (c) of the definition of ''information technology'' at FAR 2.101.

Item III—Final Overhead Settlement (FAR Case 95–017)

This final rule amends FAR parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by (1) extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractor's fiscal year, (2) permitting extensions to the 6-month time period for exceptional circumstances only, and (3) providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

Item IV—Reorganization of FAR Part 13, Simplified Acquisition Procedures (FAR Case 94–772)

This final rule revises FAR part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213–4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

Item V—Reporting Trade Sanction Exemptions (FAR Case 97–021)

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative of such exemptions within 30 days after contract award.

Item VI—New Mexico Gross Receipts and Compensating Tax (FAR Case 97–018)

This final rule amends FAR 29.401–6 to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation.

Item VII—Compensation of Certain Contractor Personnel (FAR Case 96–325)

The interim rule published as Item XI of FAC 90–45 is converted to a final rule with a minor clarifying amendment at FAR 31.205–6(p)(1). The rule implements Section 809 of the Fiscal

Year 1997 National Defense Authorization Act (Pub. L. 104–201). Section 809 places a Governmentwide ceiling of $250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during fiscal year 1997.

Item VIII—Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond (FAR Case 95–032)

This final rule amends the cost principle at FAR 31.205–18, Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs, and deletes FAR subpart 42.10, Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs. The rule removes, for fiscal year 1996 and beyond, the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

Item IX—Travel Reimbursement (FAR Case 97–007)

This interim rule amends FAR 31.205–46 to raise, from $25 to $75, the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This change is consistent with a recent amendment to the Federal Travel Regulation.

Item X—Protests to GAO (FAR Case 97–009)

This final rule amends the protest procedures at FAR 33.101 and 33.104 to conform with revisions made to the General Accounting Office Bid Protest Regulations.

Item XI—Novation and Related Agreements (FAR Case 95–034)

This final rule amends FAR subpart 42.12 to expand and clarify procedures for processing novation agreements, and for determining when use of a novation agreement is appropriate.

Item XII—Commercial Bills of Lading, Small Package Shipments (FAR Case 97–017)

This final rule amends FAR 47.303–17 to raise the threshold for requiring receipted freight bills for small package shipments from $25 to $100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from $100 to $250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

Item XIII—Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance (FAR Case 96–022)

This final rule revises Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications, and to conform the language in the form to the current language in FAR part 46.

Item XIV—Technical Amendments

This document makes technical corrections to FAR 1.201–1, 19.811–1, and 42.203. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–03 is effective February 9, 1998, except for Items VI, IX, and XIV, which are effective December 9, 1997.

Dated: November 22, 1997.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: November 28, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: November 18, 1997.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 97–31813 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 97–03; FAR Case 97–014; Item I]

RIN 9000–AH77

Federal Acquisition Regulation; Part 30 Deviations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the prohibition against authorizing deviations from certain sections pertinent to cost accounting standards administration. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 97–014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 1.402, Policy, to remove the prohibition against authorizing deviations from FAR Part 30 (except for subsections 30.201–3 and 30.201–4, or the Cost Accounting Standards Board (CASB) rules and regulations). This prohibition was added to the FAR when the CASB rules and regulations were added to FAR part 30. Since only the CASB has authority to waive CAS, the FAR part 30 deviation prohibition at FAR 1.402 was added to preclude the granting of a CAS waiver by other than the CASB. The prohibition was intended to apply to the CASB rules and regulations, not to the administration of CAS. Accordingly, the prohibition with respect to certain portions of FAR part 30 is no longer necessary since the CASB rules and

regulations have been removed from FAR part 30 and promulgated separately by the CASB in 48 CFR Chapter 99.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 1 is amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR part 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 1.402 is amended by revising the penultimate sentence to read as follows:

1.402 Policy.

* * * Deviations are not authorized with respect to 30.201–3 and 30.201–4, or the requirements of the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)). * * *

[FR Doc. 97–31814 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 97–03; FAR Case 96–319; Item II]

RIN 9000–AH75

Federal Acquisition Regulation; Information Technology Management Reform Act of 1996

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with change, the interim rule published as Item I of Federal Acquisition Circular 90–41 on August 8, 1996. The rule amends the Federal Acquisition Regulation (FAR) to implement the Information Technology Management Reform Act (ITMRA) of 1996, Division E of Pub. L. 104–106. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 96–319.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 61 FR 41467, August 8, 1996. Twelve comments from four respondents were received during the public comment period. All comments were considered in the development of the final rule. In response to public comments on the interim rule, the definition of ''information technology'' at FAR 2.101 has been clarified.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

ITMRA requires a simplified, clear, and understandable process in the FAR for acquiring information technology. No issues were raised in response to the Initial Regulatory Flexibility Analysis. The rule applies to all entities, large and small, that propose to perform, or are awarded, Government contracts for information technology. There are no statistics available on the exact number of small businesses that submit bids or proposals for contracts for information technology. However, based on information provided by the Federal Procurement Data System, a total of 29,879 awards were made to small businesses during fiscal year 1996 under information technology product codes with a total dollar value of $4,443,176,000. The rule imposes no new reporting, recordkeeping, or other compliance requirements. There are no practical alternatives that will effectively implement ITMRA. The final rule simplifies and streamlines the process of acquiring information technology, and minimizes the economic burden of such acquisitions, while expanding opportunities for small entities to participate in Federal information technology contracts.

A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53, which was published at 61 FR 41467, August 8, 1996, is adopted as a final rule with the following change:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR Part 2 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 2.101 is amended in the definition of ''Information technology'' by revising paragraph (c) to read as follows:

2.101 Definitions.

* * * * *

Information technology * * *

* * * * *

(c) The term *information technology* does not include—

(1) Any equipment that is acquired by a contractor incidental to a contract; or

(2) Any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

* * * * *

[FR Doc. 97–31815 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 42, and 52

[FAC 97–03; FAR Case 95–017; Item III]

RIN 9000–AG87

Federal Acquisition Regulation; Final Overhead Settlement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to improve the process of final settlement of contractor overhead rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–03, FAR case 95–017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by—

- Extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractors fiscal year;
- Permitting extensions to the 6-month time period for exceptional circumstances only; and
- Providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

A proposed rule was published in the **Federal Register** on July 29, 1996 (61 FR 39518). Fourteen sources submitted comments. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require settlement of contractor indirect cost rates.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 42, and 52

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.703 [Amended]

2. Section 4.703 is amended in paragraph (b)(3) by removing ''90-day'' each time it appears (twice).

PART 42—CONTRACT ADMINISTRATION

3. Section 42.705–1 is amended by revising paragraph (b)(1) to read as follows:

42.705–1 Contracting officer determination procedure.

* * * * *

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216–7 or 52.216–13, the contractor shall submit to the contracting officer and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address http://www.dtic.mil/dcaa;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767–1061;

(iii) Sending an E-Mail request to *CMO@hql.dcaa.mil; or

(iv) Writing to: Headquarters DCAA, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

* * * * *

4. Section 42.705–2 is amended by revising paragraph (b)(1) to read as follows:

42.705–2 Auditor determination procedures.

* * * * *

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer and auditor a final indirect cost rate proposal in accordance with 42.705–1(b)(1).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.216–7 is amended by revising the date of the clause and paragraph (d)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Feb 1998)

* * * * *

(d) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

6. Section 52.216–13 is amended by revising the date of the clause; in the introductory text of paragraph (c) by removing the word ''below'' and inserting ''of this clause''; and by revising paragraph (c)(2) to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment Facilities (Feb 1998)

* * * * *

(c) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

7. Section 52.216–15 is amended by revising the date of the clause and paragraph (b) to read as follows:

52.216–15 Predetermined Indirect Cost Rates.

* * * * *

Predetermined Indirect Cost Rates (Feb 1998)

* * * * *

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

[FR Doc. 97–31816 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53

[FAC 97–03; FAR Case 94–772; Item IV]

RIN 9000–AH24

Federal Acquisition Regulation; Reorganization of FAR Part 13, Simplified Acquisition Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reorganize part 13 for clarity and to make other changes to facilitate the use of electronic commerce in Government contracting. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–03, FAR case 94–772.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213–4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

This effort was initiated as a result of public comments received during the comment period on FAR case 94–770, published in the **Federal Register** as an interim rule on July 3, 1995 (60 FR 34741). A proposed rule was published in the **Federal Register** on September 13, 1996 (61 FR 48532).

Thirteen public comments were received in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the FAR Secretariat. The analysis is summarized as follows:

This rule amends the Federal Acquisition Regulation (FAR) by reorganizing the structure and material of part 13 in a manner that would be clear to those individuals that are newly authorized to make micro-purchases. The Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355) authorized individuals other than contracting officers to make purchases under $2,500 (micro-purchases). Also, the rule takes into account the anticipated impact on the workload of agency procurement personnel of evaluating the many sources that may respond electronically to contract actions that are initiated with widespread electronic public notice. Changes made by the rule will better enable agencies to capture the benefits of using electronic commerce in these situations. There were no public comments received in response to the initial regulatory flexibility analysis. Changes in FAR part 52 may affect a significant number of small entities that participate in Federal agency procurements. The provisions and clauses in this FAR part generally are not required for micro-purchases. It is estimated that 40 percent of the contract actions below $25,000 are micro-purchases. Approximately 50 percent of all contract actions of $100,000 or less are annually awarded to small business concerns. The rule will impose no new reporting, recordkeeping, or other compliance requirements on large or small entities. The changes to part 52 may have more impact on small business concerns than large business concerns because these changes make it more imperative that small business concerns have electronic capability to receive and transmit procurement information. This rule authorizes the incorporation by reference of any provision or clause used by an agency contracting activity, provided that provision or clause was accessible electronically to an offeror or prospective contractor. The changes in part 52 should also result in a reduction in the number of pages that a prospective contractor will have to submit with its offer to the Government. An alternative that was considered was making solicitation provisions and clauses available to prospective contractors at the time they registered with the Central Contractor Registration (CCR). In order to conduct electronic commerce with any agency of the Federal Government, a potential contractor must register with the CCR. However, providing provisions and clauses at the time of registration with the CCR does not appear to be practical, since the prospective contractor would not have any assurance that the provisions and clauses were current at the time it wanted to participate in an agency procurement.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 4, 6, 8, 12, 13, 6, 19, 32, 41, 43, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.800 [Amended]

2. Section 4.800 is amended to revise the reference in the parenthetical to read ''13.106–3(b)''.

PART 6—COMPETITION REQUIREMENTS

6.001 [Amended]

3. Section 6.001 is amended in paragraph (a) by revising the references ''13.602'' and ''subpart 13.6'' to read ''13.501'' and ''subpart 13.5'', respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

4. Section 8.404 is amended in the first sentence of paragraph (b)(4) by revising the parenthetical to read ''(see 13.303–2(c)(3))''.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Section 12.102 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

12.102 Applicability.

* * * * *

(d) * * *

(2) Using the Standard Form 44 (see 13.306);

(3) Using the imprest fund (see 13.305); or

* * * * *

12.203 [Amended]

6. Section 12.203 is amended in the last sentence of the undesignated paragraph by revising the reference ''subpart 13.6'' to read ''subpart 13.5''.

12.206, 12.301, and 12.602 [Amended]

7. In the following sections, remove ''13.106–2'' and insert ''13.106'': 12.206, 12.301(c)(2), 12.602(a), and 12.602(b).

8. Part 13 is revised to read as follows:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 Scope of part.
13.001 Definitions.
13.002 Purpose.
13.003 Policy.
13.004 Legal effect of quotations.
13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.
13.006 Inapplicable provisions and clauses.

Subpart 13.1—Procedures

13.101 General.
13.102 Source list.
13.103 Use of standing price quotations.
13.104 Promoting competition.
13.105 Synopsis and posting requirements.
13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
13.106–1 Soliciting competition.
13.106–2 Evaluation of quotations or offers.
13.106–3 Award and documentation.

Subpart 13.2—Actions at or Below the Micro-Purchase Threshold

13.201 General.
13.202 Purchase guidelines.

Subpart 13.3—Simplified Acquisition Methods

13.301 Governmentwide commercial purchase card.
13.302 Purchase orders.
13.302–1 General.
13.302–2 Unpriced purchase orders.
13.302–3 Obtaining contractor acceptance and modifying purchase orders.
13.302–4 Termination or cancellation of purchase orders.
13.302–5 Clauses.
13.303 Blanket purchase agreements (BPAs).
13.303–1 General.
13.303–2 Establishment of BPAs.
13.303–3 Preparation of BPAs.
13.303–4 Clauses.
13.303–5 Purchases under BPAs.
13.303–6 Review procedures.
13.303–7 Completion of BPAs.
13.303–8 Optional clause.
13.304 [Reserved]
13.305 Imprest funds and third party drafts.

13.305–1 General.
13.305–2 Agency responsibilities.
13.305–3 Conditions for use.
13.305–4 Procedures.
13.306 SF 44, Purchase Order—Invoice—Voucher.
13.307 Forms.

Subpart 13.4—Fast Payment Procedure

13.401 General.
13.402 Conditions for use.
13.403 Preparation and execution of orders.
13.404 Contract clause.

Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.
13.501 Special documentation requirements.

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding $5,000,000, including options. See part 12 for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602–5 for simplified procedures to be used when acquiring architect-engineer services.

13.001 Definitions.

As used in this part—

Authorized individual means a person who has been granted authority, in accordance with agency procedures, to acquire supplies and services in accordance with this part.

Governmentwide commercial purchase card means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

Imprest fund means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

Purchase order means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

Third party draft means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies and services. (See Treasury Financial Management Manual, Section 3040.70.)

13.002 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

(a) Reduce administrative costs;

(b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;

(c) Promote efficiency and economy in contracting; and

(d) Avoid unnecessary burdens for agencies and contractors.

13.003 Policy.

(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using—

(1) Required sources of supply under part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);

(2) Existing indefinite delivery/indefinite quantity contracts; or

(3) Other established contracts.

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500 and not exceeding $100,000 is reserved exclusively for small business concerns and shall be set aside (see 19.000 and subpart 19.5). See 19.502–2 for exceptions.

(2) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by part 19. If the solicitation is oral, however, information substantially identical to that in the provision shall be given to potential quoters.

(c) The contracting office shall use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, only if the office's cognizant agency has certified full FACNET capability in accordance with 4.505–2. This limitation does not apply to acquisitions of commercial items conducted using subpart 13.5.

(d) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed the simplified acquisition threshold (or $5,000,000, including options, for acquisitions of commercial items using Subpart 13.5). Do not break down requirements aggregating more than the simplified acquisition threshold (or for commercial items, the threshold in subpart 13.5) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

(1) Permit use of simplified acquisition procedures; or

(2) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

(e) An agency that has specific statutory authority to acquire personal services (see 37.104) may use simplified acquisition procedures to acquire those services.

(f) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions.

(g) For contract actions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, agencies shall maximize the use of FACNET, when practicable and cost-effective (see 4.506), to acquire supplies and services (including construction, research and development, and architect-engineer). FACNET also may be used for contract actions exceeding the simplified acquisition threshold. Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(h) Authorized individuals shall make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. For acquisitions not expected to exceed—

(1) The simplified acquisition threshold for other than commercial items, use any appropriate combination of the procedures in parts 13, 14, 15, 35, or 36, including the use of Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)); or

(2) $5 million for commercial items, use any appropriate combination of the procedures in parts 12, 13, 14, and 15 (see paragraph (d) of this section).

(i) In addition to other considerations, contracting officers shall—

(1) Promote competition to the maximum extent practicable (see 13.104);

(2) Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond (see 5.203);

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers conducted

through FACNET, see 13.106–2(b)(3); and

(4) Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

13.004 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.302–4 for procedures on termination or cancellation of purchase orders.)

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) and (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.).

(2) 40 U.S.C. 270a (Miller Act). (Although the Miller Act does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see 28.102) are still required if the contract exceeds $25,000.).

(3) 40 U.S.C. 327—333 (Contract Work Hours and Safety Standards Act—Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug-Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act). (Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable.)

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(b) The Federal Acquisition Regulatory (FAR) Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Public Law 103–355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator, Office of Federal Procurement Policy (OFPP), to include any applicable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

13.006 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103–355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

(a) 52.203–5, Covenant Against Contingent Fees.

(b) 52.203–6, Restrictions on Subcontractor Sales to the Government.

(c) 52.203–7, Anti-Kickback Procedures.

(d) 52.215–2, Audits and Records—Negotiation.

(e) 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation.

(f) 52.223–6, Drug-Free Workplace, except for individuals.

(g) 52.223–9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

Subpart 13.1—Procedures

13.101 General.

(a) In making purchases, contracting officers shall—

(1) Comply with the policy in 7.202 relating to economic purchase quantities, when practicable;

(2) Satisfy the procedures described in subpart 19.6 with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see subpart 9.1);

(3) Use United States-owned excess or near-excess foreign currency, if appropriate, in making payments under simplified acquisition procedures (see subpart 25.3); and

(4) Provide for the inspection of supplies or services as prescribed in 46.404.

(b) In making purchases, contracting officers should—

(1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an ''all-or-none'' or ''multiple award'' basis provided suppliers are so advised when quotations or offers are requested;

(2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in 52.102 are satisfied;

(3) Make maximum effort to obtain trade and prompt payment discounts (see 14.408–3). Prompt payment discounts shall not be considered in the evaluation of quotations; and

(4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more

convenient). New supply sources for the list may be obtained from a variety of sources, including the Procurement Automated Source System (PASS) of the Small Business Administration and the Central Contractor Registration (CCR) Data Base (see 4.503). The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(1) Small business.

(2) Small disadvantaged business.

(3) Women-owned small business.

(b) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

(a) The pricing information is current; and

(b) The Government obtains the benefit of maximum discounts before award.

13.104 Promoting competition.

The contracting officer shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

(a) The contracting officer shall not—

(1) Solicit quotations based on personal preference; or

(2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.

(b) If using simplified acquisition procedures and not using FACNET, maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to 5.101 and an exception under 5.202 is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

(a) The contracting officer shall comply with the public display and synopsis requirements of 5.101 and 5.203 unless—

(1) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(2) An exception in 5.202 applies.

(b) When acquiring commercial items, the contracting officer may use a combined synopsis/solicitation. In such cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

13.106–1 Soliciting competition.

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in 13.104 and the following before requesting quotations or offers:

(1)(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, *e.g.*, past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (*e.g.*, urgency, exclusive licensing agreements, or industrial mobilization).

(2) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to subpart 13.5, the requirements at 13.501(a) apply.

(c) *Soliciting orally.* (1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

(i) The acquisition does not exceed the simplified acquisition threshold;

(ii) FACNET is not available or the contracting office has a written determination that it is not practicable or cost-effective to purchase via FACNET (see 4.506); and

(iii) Notice is not required under 5.101.

(2) However, an oral solicitation may not be practicable for contract actions exceeding $25,000 unless covered by an exception in 5.202.

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed $25,000. The contracting officer shall issue a written solicitation for construction requirements exceeding $2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of subpart 17.2 are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including FACNET) if doing so would not interfere with the efficient conduct of the acquisition. For an acquisition conducted through FACNET, an agency must respond to telephonic or facsimile inquiries only if it is unable to receive inquiries through FACNET.

13.106–2 Evaluation of quotations or offers.

(a) *General.* (1) The contracting officer shall evaluate quotations or offers—

(i) In an impartial manner; and

(ii) Inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(2) Quotations or offers shall be evaluated on the basis established in the solicitation.

(3) All quotations or offers shall be considered (see paragraph (b) of this subsection).

(b) *Evaluation procedures.* (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used.

(2) If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may

conduct comparative evaluations of offers. Evaluation of other factors, such as past performance—

(i) Does not require the creation or existence of a formal data base; and

(ii) May be based on information such as the contracting officer's knowledge of and previous experience with the supply or service being acquired, customer surveys, or other reasonable basis.

(3) For acquisitions conducted using FACNET, the contracting officer may—

(i) After preliminary consideration of all quotations or offers, identify from all quotations or offers received one that is suitable to the user, such as the lowest priced brand name product, and quickly screen all lower priced quotations or offers based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers having the highest past performance rating possible represents the best value when compared to any lower priced quotation or offer.

13.106–3 Award and documentation.

(a) *Basis for award.* Before making award, the contracting officer shall determine that the proposed price is fair and reasonable.

(1) Whenever possible, base price reasonableness on competitive quotations or offers.

(2) If only one response is received, include a statement of price reasonableness in the contract file. The statement may be based on—

(i) Market research;

(ii) Comparison of the proposed price with prices found reasonable on previous purchases;

(iii) Current price lists, catalogs, or advertisements;

(iv) A comparison with similar items in a related industry;

(v) Value analysis;

(vi) The contracting officer's personal knowledge of the item being purchased;

(vii) Comparison to an independent Government estimate; or

(viii) Any other reasonable basis.

(3) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(b) *File documentation and retention.* Keep documentation to a minimum. Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see subpart 4.8). The following illustrate the extent to which quotation or offer information should be recorded:

(1) *Oral solicitations.* The contracting office should establish and maintain records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) *Written solicitations* (see 2.101). For acquisitions not exceeding the simplified acquisition threshold, limit written records of solicitations or offers to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(3) *Special situations.* Include additional statements—

(i) Explaining the absence of competition if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold (does not apply to an acquisition of utility services available from only one source); or

(ii) Supporting the award decision if other than price-related factors were considered in selecting the supplier.

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through FACNET, notification to unsuccessful suppliers shall be given only if requested or required by 5.301.

(d) *Request for information.* If a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see 15.503(b)(2)).

Subpart 13.2—Actions at or Below the Micro-Purchase Threshold

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603–3).

(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see 2.101).

(c) Purchases at or below the micro-purchase threshold may be conducted using any of the methods described in subpart 13.3, provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods.

(d) Micro-purchases do not require provisions or clauses, except as provided at 32.1103. This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause.

(e) The requirements in part 8 apply to purchases at or below the micro-purchase threshold.

13.202 Purchase guidelines.

(a) *Solicitation, evaluation of quotations, and award.* (1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603–3(b) considers the price to be reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with 1.603–3(b) suspects or has information to indicate that the price may not be reasonable (*e.g.*, comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (*e.g.*, a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.

Subpart 13.3—Simplified Acquisition Methods

13.301 Governmentwide commercial purchase card.

(a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in accordance with 1.603–3. The card may

be used only for purchases that are otherwise authorized by law or regulation.

(b) Agencies using the Governmentwide commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4–4500) and that are consistent with the terms and conditions of the GSA Federal Supply Service Contract Guide for Governmentwide Commercial Purchase Card Service. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. Agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor.

(c) The Governmentwide commercial purchase card may be used to—

(1) Make micro-purchases;

(2) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or

(3) Make payments, when the contractor agrees to accept payment by the card.

13.302 Purchase orders.

13.302–1 General.

(a) Except as provided under the unpriced purchase order method (see 13.302–2), purchase orders generally are issued on a fixed-price basis. See 12.207 for acquisition of commercial items.

(b) Purchase orders shall—

(1) Specify the quantity of supplies or scope of services ordered;

(2) Contain a determinable date by which delivery of the supplies or performance of the services is required;

(3) Provide for inspection as prescribed in part 46. Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required by part 46. When inspection and acceptance will be performed at destination, advance copies of the purchase order or equivalent notice shall be furnished to the consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies;

(4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary; and

(5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles at 14.408–3.

(c) The contracting officer's signature on purchase orders shall be in accordance with 4.101 and the definitions at 2.101. Facsimile and electronic signature may be used in the production of purchase orders by automated methods.

(d) Limit the distribution of copies of purchase orders and related forms to the minimum deemed essential for administration and transmission of contractual information.

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) may be required for payments. See 32.1103 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order. Contracting officers shall not accept EFT payment data. The contractor shall provide all such data directly to the payment office.

13.302–2 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(2) The purchase is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot readily be established; or

(iii) Supplies or services for which prices are known to be competitive, but exact prices are not known (*e.g.*, miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued on paper or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow up on each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106–3(a)), process the invoice for payment.

13.302–3 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written (see 2.101) acceptance of the purchase order by the contractor.

(b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(c) A contractor's written acceptance of a purchase order modification may be required only if—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.302–4 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—

(1) 12.403(d) and 52.212–4(l) for commercial items; or

(2) Part 49 or 52.213–4 for other than commercial items.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (*i.e.*, the purchase order shall be considered canceled).

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed in paragraph (a) of this subsection.

13.302–5 Clauses.

(a) Each purchase order (and each purchase order modification (see 13.302–3)) shall incorporate all clauses prescribed for the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213–2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (*i.e.*, any publication printed, microfilmed, photocopied, or

magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213–3, Notice to Supplier, in unpriced purchase orders.

(d) The contracting officer may use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see 12.301). The clause—

(1) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and

(2) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

13.303 Blanket purchase agreements (BPAs).

13.303–1 General.

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing ''charge accounts'' with qualified sources of supply (see subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such organizations, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds.

13.303–2 Establishment of BPAs.

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) The use of this procedure would avoid the writing of numerous purchase orders.

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

(b) After determining a BPA would be advantageous, contracting officers shall—

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and

(2) Consider suppliers whose past performance has shown them to be dependable, who offer quality supplies or services at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.

(c) BPAs may be established with—

(1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

(2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or

(3) Federal Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract.

(d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—

(1) Securing maximum discounts;

(2) Documenting individual purchase transactions;

(3) Periodic billings; and

(4) Incorporating other necessary details.

13.303–3 Preparation of BPAs.

Prepare BPAs on the forms specified in 13.307. Do not cite accounting and appropriation data (see 13.303–5(e)(4)).

(a) The following terms and conditions are mandatory:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.303–5(b)).

(4) *Individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(5) *Delivery tickets.* A requirement that all shipments under the agreement, except those for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips that shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) *Invoices.* One of the following statements shall be included (except that the statement in paragraph (a)(6)(iii) of this subsection should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated, provided that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers,

magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(b) If the fast payment procedure is used, include the requirements stated in 13.403.

13.303–4 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in this part that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise (*e.g.,* see 22.305(a), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.303–5 Purchases under BPAs.

(a) Use a BPA only for purchases that are otherwise authorized by law or regulation.

(b) Individual purchases shall not exceed the simplified acquisition threshold. However, agency regulations may establish a higher threshold consistent with the following:

(1) The simplified acquisition threshold and the $5,000,000 limitation for individual purchases do not apply to BPAs established in accordance with 13.303–2(c)(3).

(2) The limitation for individual purchases for commercial item acquisitions conducted under subpart 13.5 is $5,000,000.

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.003(b) and subpart 19.5 also apply to each order.

(d) If, for a particular purchase greater than the micro-purchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition, the contracting officer shall—

(1) Solicit quotations from other sources (see 13.105) and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if—

(i) Recurring requirements for the same or similar supplies or services seem likely;

(ii) Qualified sources are willing to accept BPAs; and

(iii) It is otherwise practical to do so.

(e) Limit documentation of purchases to essential information and forms as follows:

(1) Purchases generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if necessary to ensure that the supplier and the purchaser agree concerning the transaction.

(3) Unless a paper document is issued, record essential elements (*e.g.,* date, supplier, supplies or services, price, delivery date) on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the supplier's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the supplies or services. However, if the purchase is assigned to another activity for administration, the authorized Government representative shall document receipt and acceptance of supplies or services by signing and dating the agency specified form after verification and after notation of any exceptions.

13.303–6 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this subsection are being followed.

13.303–7 Completion of BPAs.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

13.303–8 Optional clause.

The clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), may be used in BPAs established under this section.

13.304 [Reserved]

13.305 Imprest funds and third party drafts.

13.305–1 General.

Imprest funds and third party drafts may be used to acquire and to pay for supplies or services. Policies and regulations concerning the establishment of and accounting for imprest funds and third party drafts, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies also shall be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.305–2 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

(a) Periodically review and determine whether there is a continuing need for each fund or third party draft account established, and that amounts of those funds or accounts are not in excess of actual needs;

(b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and

(2) Documentation of purchases using imprest funds or third party drafts, including documentation of—

(i) Receipt and acceptance of supplies and services by the Government;

(ii) Receipt of cash or third party draft payments by the suppliers; and

(iii) Cash advances and reimbursements.

13.305–3 Conditions for use.

Imprest funds or third party drafts may be used for purchases when—

(a) The imprest fund transaction does not exceed $500 or such other limits as have been approved by the agency head;

(b) The third party draft transaction does not exceed $2,500, unless authorized at a higher level in accordance with Treasury restrictions;

(c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and

(d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.305–1.

13.305–4 Procedures.

(a) Each purchase using imprest funds or third party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring that adequate funds are available for the purchase.

(b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.

(d) Forms prescribed at 13.307(e) may be used if a written order is considered necessary (*e.g.*, if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used, endorse it ''Payment to be made from Imprest Fund'' (or ''Payment to be made from Third Party Draft,'' as appropriate).

(e) The individual authorized to make purchases using imprest funds or third party drafts shall—

(1) Furnish to the imprest fund or third party draft cashier a copy of the document required under paragraph (a) of this subsection annotated to reflect—

(i) That an imprest fund or third party draft purchase has been made;

(ii) The unit prices and extensions; and

(iii) The supplier's name and address; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—

(i) The supplier's name and address;

(ii) List and quantity of items supplied;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

13.306 SF 44, Purchase Order—Invoice—Voucher.

The SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It also can be used as a receiving report, invoice, and public voucher.

(a) This form may be used if all of the following conditions are satisfied:

(1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations. Agencies may establish higher dollar limitations for specific activities or items;

(2) The supplies or services are immediately available;

(3) One delivery and one payment will be made; and

(4) Its use is determined to be more economical and efficient than use of other simplified acquisition procedures.

(b) General procedural instructions governing the form's use are printed on the form and on the inside front cover of each book of forms.

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using this form.

(d) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.307 Forms.

(a) *Commercial items.* For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

(b) *Other than commercial items.*

(1) Except when quotations are solicited via FACNET, other electronic means, or orally, the SF 1449; SF 18, Request for Quotations; or an agency form/automated format may be used. Each agency request for quotations form/automated format should conform with the SF 18 or SF 1449 to the maximum extent practicable.

(2) Both SF 1449 and OF 347, Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format also may be used.

(c) *Forms used for both commercial and other than commercial items.*

(1) OF 336, Continuation Sheet, or an agency form/automated format may be used when additional space is needed.

(2) OF 348, Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be used for negotiated purchases when additional space is needed. Agencies may print on these forms the clauses considered to be generally suitable for purchases.

(3) SF 30, Amendment of Solicitation/Modification of Contract, or a purchase order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.

(d) SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form that may be used as outlined in 13.306.

(e) SF 1165, Receipt for Cash—Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

Subpart 13.4—Fast Payment Procedure

13.401 General.

(a) The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a certification that the contractor—

(1) Has delivered the supplies to a post office, common carrier, or point of first receipt by the Government; and

(2) Shall replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

(b) The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.402 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual purchasing instruments do not exceed $25,000, except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance.

(c) Title to the supplies passes to the Government—

(1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or

(2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed-price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure—

(1) Documentation of evidence of contractor performance under fast payment purchases;

(2) Timely feedback to the contracting officer in case of contractor deficiencies; and

(3) Identification of suppliers that have a current history of abusing the fast payment procedure (also see subpart 9.1).

13.403 Preparation and execution of orders.

Priced or unpriced contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(a) A requirement that the supplies be shipped transportation or postage prepaid.

(b) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.302–2(c)).

(c) The following statement on the consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

13.404 Contract clause.

The contracting officer shall insert the clause at 52.213–1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.402 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding $5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in subpart 12.3.

(d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.501 Special documentation requirements.

(a) *Sole source acquisitions.* (1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in part 6. However, contracting officers shall—

(i) Conduct sole source acquisitions, as defined in 6.003, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section; and

(ii) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996).

(2) Justifications and approvals are required under this subpart only for sole source acquisitions.

(i) For a proposed contract exceeding $100,000, but not exceeding $500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(ii) For a proposed contract exceeding $500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4). This authority is not delegable.

(b) *Contract file documentation.* The contract file shall include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR subpart 13.5 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

PART 16—TYPES OF CONTRACTS

16.701 [Amended]

9. Section 16.701 is amended in the parenthetical by revising ''subpart 13.2'' to read ''13.303''.

16.703 [Amended]

10. Section 16.703 is amended in paragraph (c)(1)(vi) by revising the citation ''13.303'' to read ''13.403''.

PART 19—SMALL BUSINESS PROGRAMS

19.1006 [Amended]

11. Section 19.1006 is amended in paragraph (c)(1)(i) by removing ''13.105 or''.

PART 32—CONTRACT FINANCING

32.1103 [Amended]

12. Section 32.1103 is amended in paragraph (a)(1) by revising the reference ''13.103(e)'' to read ''13.003(f)'' and in paragraph (b)(2) by revising ''13.103(e)'' to read ''13.301''.

PART 41—ACQUISITION OF UTILITY SERVICES

41.202 [Amended]

13. Section 41.202 is amended in paragraph (c)(1) by revising the reference ''subpart 13.5'' to read ''13.302''.

PART 43—CONTRACT MODIFICATIONS

43.301 [Amended]

14. Section 43.301 is amended in paragraph (a)(2)(iii) by revising the reference ''13.503'' to read ''13.302–3''.

PART 49—TERMINATION OF CONTRACTS

49.002 [Amended]

15. Section 49.002 is amended in paragraph (a) by revising the reference ''13.504(b)'' to read ''13.302–4''.

16. Section 49.501 is amended by adding the following text as the second sentence:

49.501 General.

* * * This subpart does not apply to contracts that use the clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.101 [Amended]

17. Section 52.101 is amended in paragraph (e)(2)(i) by removing the semicolon after the word ''authorized'' and replacing it with ''(see 52.102);''.

18. Section 52.102 is revised to read as follows:

52.102 Incorporating provisions and clauses.

(a) Provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they—

(1) Are used with one or more alternates or on an optional basis;

(2) Are prescribed on a ''substantially as follows'' or ''substantially the same as'' basis, provided they are used verbatim;

(3) Require modification or the insertion by the Government of fill-in material (see 52.104); or

(4) Require completion by the offeror or prospective contractor. This instruction also applies to provisions completed as annual representations and certifications.

(b) Except for provisions and clauses prescribed in 52.107, any provision or clause that can be accessed electronically by the offeror or prospective contractor may be incorporated by reference in solicitations and/or contracts. However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Agency approved provisions and clauses prescribed in agency acquisition regulations, and provisions and clauses not authorized by subpart 52.3 to be incorporated by reference, need not be incorporated in full text, provided the contracting officer includes in the solicitation and contract a statement that—

(1) Identifies all provisions and clauses that require completion by the offeror or prospective contractor;

(2) Specifies that the provisions and clauses must be completed by the offeror or prospective contractor and must be submitted with the quotation or offer; and

(3) Identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed.

(d) An agency may develop a group listing of provisions and clauses that apply to a specific category of contracts. An agency group listing may be incorporated by reference in solicitations and/or contracts in lieu of citing the provisions and clauses individually, provided the group listing is made available electronically to offerors and prospective contractors.

(e) A provision or clause that is not available electronically to offerors and prospective contractors shall be incorporated in solicitations and/or contracts in full text if it is—

(1) A FAR provision or clause that otherwise is not authorized to be incorporated by reference (see subpart 52.3); or

(2) A provision or clause prescribed for use in an agency acquisition regulation.

(f) Provisions or clauses may not be incorporated by reference by being listed in the—

(1) Provision at 52.252–3, Alterations in Solicitations; or

(2) Clause at 52.252–4, Alterations in Contract.

52.102–1 and 52.102–2 [Removed]

19. Sections 52.102–1 and 52.102–2 are removed.

20. Section 52.213–1 is revised to read as follows:

52.213–1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

Fast Payment Procedure (Feb 1998)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice ''FAST PAY.''

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall prepare the receiving report on the prescribed form or, alternatively, shall include the following information on the invoice, in addition to that required in paragraph (c)(1) of this clause:

(i) A statement in prominent letters ''NO RECEIVING REPORT PREPARED.''

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level—

(A) National stock number and/or manufacturer's part number;

(B) Unit of measure;

(C) Ship-To Point;

(D) Mark-For Point, if in the contract; and

(E) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *Fast pay container identification.* The Contractor shall mark all outer shipping containers ''FAST PAY.''

(End of clause)

52.213–2 [Amended]

21. Section 52.213–2 is amended in the introductory text by revising the reference ''13.506(b)'' to read ''13.302–5(b)''.

52.213–3 [Amended]

22. Section 52.213–3 is amended in the introductory text by revising the reference ''13.506(c)'' to read ''13.302–5(c)''.

23. Section 52.213–4 is added to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in 13.302–5(d), insert the following clause:

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Feb 1998)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222–3, Convict Labor (Aug 1996) (E.O. 11755).

(ii) 52.233–3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

(i) 52.225–11, Restrictions on Certain Foreign Purchases (Oct 1996).

(ii) 52.232–1, Payments (Apr 1984).

(iii) 52.232–8, Discounts for Prompt Payment (May 1997).

(iv) 52.232–11, Extras (Apr 1984).

(v) 52.232–25, Prompt Payment (Jun 1997).

(vi) 52.232–33, Mandatory Information for Electronic Funds Transfer Payment (Aug 1996).

(vii) 52.233–1, Disputes (Oct 1995).

(viii) 52.244–6, Subcontracts for Commercial Items and Commercial Components (Oct 1995).

(ix) 52.253–1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222–20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35–45) (Applies to supply contracts over $10,000 in the United States).

(ii) 52.222–26, Equal Opportunity (APR 1984) (E.O. 11246) (Applies to contracts over $10,000).

(iii) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984) (38 U.S.C. 4212) (Applies to contracts over $10,000).

(iv) 52.222–36, Affirmative Action for Handicapped Workers (APR 1984) (29 U.S.C. 793) (Applies to contracts over $2,500).

(v) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988) (38 U.S.C. 4212) (Applies to contracts over $10,000).

(vi) 52.222–41, Service Contract Act of 1965, As Amended (MAY 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over $2,500).

(vii) 52.223–5, Pollution Prevention and Right-to-Know Information (MAR 1997) (E.O. 12856) (Applies to services performed on Federal facilities).

(viii) 52.225–3, Buy American Act—Supplies (JAN 1994) (41 U.S.C. 10) (Applies to supplies, and to services involving the furnishing of supplies, if the contract was—

(A) Under $25,000; or

(B) Set aside for small business concerns, regardless of dollar value).

(2) Listed below are additional clauses that may apply:

(i) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over $25,000).

(ii) 52.211–17, Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) 52.247–29, F.o.b. Origin (JUN 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247–34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252–2, Clauses Incorporated by Reference (FEB 1998).* This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

_____

_____

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance.* The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

24. Sections 52.252–1 and 52.252–2 are revised to read as follows:

52.252–1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting

the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

_____

_____

[*Insert one or more Internet addresses*]

(End of provision)

52.252–2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

_____

_____

[*Insert one or more Internet addresses*]

(End of clause)

PART 53—FORMS

53.213 and 53.243 [Amended]

25. Amend the internal references throughout 53.213 and 53.243 as indicated in the following table:

Location	Remove	Insert
53.213(a)	13.107 both times it appears	13.307(b)
53.213(b)	13.503(b)	13.307(c)(3)
3.213(c)	13.505(b)	13.306
53.213(d)	13.404(e)	13.307(e)
53.213(e)	13.107(c)	13.307(c)(1)
53.213(f)(1)	13.505	13.307
53.213(f)(2)	13.202	13.303–2
53.213(f)(2)	13.204(e)	13.303–5
53.243 undesignated paragraph	13.503(b)	13.302–3

[FR Doc. 97–31817 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97–03; FAR Case 97–021; Item V]

RIN 9000–AH80

Federal Acquisition Regulation; Reporting Trade Sanction Exemptions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the reporting requirements for trade sanction exemptions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–03, FAR case 97–021.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from the trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative (USTR) of such exemptions within 30 days after contract award. FAR Subpart 25.10 implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to the Trade Agreements Act (10 U.S.C. 2515), as amended by Title VII of Public Law 100–418 (The Buy American Act of 1988). The Buy American Act of 1988 also amended 41 U.S.C. 10b-1 to permit agency heads to waive application of the sanctions for certain contracts after providing notification to Congress.

The Buy American Act of 1988 included a sunset provision (Section 7004) by which amendments to 19 U.S.C. 2515 and 41 U.S.C. 10b-1 expired on April 30, 1996. However, the sanctions imposed by the President remain in effect until the President amends or terminates them. The requirement to notify Congress is no longer in effect. Since the USTR is delegated by the President with administering the sanctions, the requirement to notify the USTR has been retained.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.1000 is revised to read as follows:

25.1000 Scope of subpart.

This subpart implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to section 305(g)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)). These sanctions apply to countries that discriminate against U.S. products or services in Government procurement. This subpart does not apply to the Department of Defense. For thresholds that are unique to individual agencies (*e.g.*, Power Marketing Administration of the Department of Energy), see agency regulations.

3. Section 25.1002 is amended by revising paragraph (c)(2) to read as follows:

25.1002 Trade sanctions.

* * * * *

(c) * * *

(2) When a determination is made according to this paragraph (c), the agency shall notify the United States Trade Representative within 30 days after contract award.

* * * * *

[FR Doc. 97–31818 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 29

[FAC 97–03; FAR Case 97–018; Item VI]

RIN 9000–AH79

Federal Acquisition Regulation; New Mexico Gross Receipts and Compensating Tax

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–03, FAR case 97–018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 29.401–6 by adding the Defense Special Weapons Agency to the list in paragraph (c)(1) as an agency that has entered into an agreement with the State of New Mexico to eliminate double taxation under New Mexico's Gross Receipts and Compensating Tax Act. Because participating Federal agencies may or may not be executive agencies, the term ''executive'' has been deleted in paragraphs (b) and (c)(1).

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which requires the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 29

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 29 is amended as set forth below:

PART 29—TAXES

1. The authority citation for 48 CFR Part 29 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

29.401–6 [Amended]

2. Section 29.401–6 is amended in the introductory text of paragraph (b) and paragraph (c)(1) by removing ''executive''; and also in the list following paragraph (c)(1) by adding, in alphabetical order, ''United States Defense Special Weapons Agency;''.

[FR Doc. 97–31819 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–03; FAR Case 96–325; Item VII]

RIN 9000–AH50

Federal Acquisition Regulation; Compensation of Certain Contractor Personnel

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item XI of Federal Acquisition Circular 90–45 on January 2, 1997. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) by placing a Governmentwide ceiling on allowable compensation costs for contractor personnel in senior management positions under contracts that are awarded during fiscal year 1997. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 96–325.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 62 FR 269, January 2, 1997. The preamble to the interim rule erroneously contained an effective date of January 1, 1997; the rule applies to contracts awarded on or after the date the rule was published (January 2, 1997).

This final rule differs from the interim rule by making an editorial change for clarity. At FAR 31.205–6(p)(1), ''that exceed'' replaces the phrase ''in excess of.''

Public comments were received from 11 sources. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 62 FR 269, January 2, 1997, is adopted as a final rule with the following change:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–6 is amended by revising paragraph (p)(1) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) * * * (1) For contracts awarded during fiscal year 1997, costs incurred from October 1, 1996, through September 30, 1997, for compensation of an officer in a senior management position that exceed $250,000 per year are unallowable (Section 809 of Public Law 104–201).

* * * * *

[FR Doc. 97–31820 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 42

[FAC 97–03; FAR Case 95–032; Item VIII]

RIN 9000–AH37

Federal Acquisition Regulation; Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) allowable cost criteria for Independent Research and Development (IR&D)/Bid and Proposal (B&P) costs for fiscal year 1996 and beyond, by removing the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the final rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 95–032.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published on November 14, 1996 (61 FR 58452). The final rule differs from the proposed rule by revising the last sentence at FAR 31.205–18(e) for clarification and by deleting ''and B&P'' from the heading at 31.205–18(d) to better convey the subject matter of the paragraph.

Public comments were received from four sources. The comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 42

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 31 and 42 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31 and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205–18 is amended in paragraph (a) by removing definitions for ''Contractor'', ''Covered contract'', ''Covered segment'', and ''Major contractor''; by revising paragraph (c) and the heading of paragraph (d); and adding paragraph (e)(3) to read as follows:

31.205–18 Independent research and development and bid and proposal costs.

* * * * *

(c) *Allowability.* Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) *Deferred IR&D costs.* * * *

* * * * *

(e) * * *

(3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

PART 42—CONTRACT ADMINISTRATION

Subpart 42.10 [Reserved]

3. Subpart 42.10 is removed and reserved.

[FR Doc. 97–31821 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–03; FAR Case 97–007; Item IX]

RIN 9000–AH76

Federal Acquisition Regulation; Travel Reimbursement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase from $25 to $75 the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective:* December 9, 1997.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 9, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, Washington, DC 20405

E-Mail comments submitted over the Internet should be addressed to:

farcase.97–007@gsa.gov

Please cite FAC 97–03, FAR case 97–007, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 97–007.

SUPPLEMENTARY INFORMATION:

A. Background

On October 28, 1996, GSA published Federal Travel Regulation (FTR) Amendment 50, in the **Federal Register** (61 FR 55577), to streamline the process of travel reimbursement claims. One of the FTR changes was to raise, from $25.00 to $75.00, the maximum travel expense amount which may be claimed without the requirement for a supporting receipt.

In concert with the FTR change, this rule amends the cost principle at FAR 31.205–46 to increase, from $25.00 to $75.00, the threshold at which contractor personnel must provide a receipt to support travel expenditures.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–03, FAR case 97–007), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the interim rule contains information collection requirements. The collection of this information is currently cleared under Office of Management and Budget number 9000–0088. The increase in the receipt threshold is expected to reduce the existing burden hours. Copies of the form and supporting documents reducing the burden hours may be obtained from the FAR Secretariat. Estimated number of respondents: 5,800; responses per respondent: 10; total burden hours: 14,500; frequency of report: on occasion.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to make the cost principle consistent with the newly revised Federal Travel Regulations and to remove the unnecessarily burdensome recordkeeping requirement for travel expenses between $25.00 and $75.00, as quickly as possible. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–46 is amended by revising paragraph (a)(3)(iv) to read as follows:

31.205–46 Travel costs.

(a) * * *

(3) * * *

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of $75.00 or more. The approved justification required by paragraph (a)(3)(ii) and, if applicable, paragraph (a)(3)(iii) of this subsection must be retained.

* * * * *

[FR Doc. 97–31822 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 97–03; FAR Case 97–009; Item X]

RIN 9000–AH81

Federal Acquisition Regulation; Protests to GAO

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform with revisions to the General Accounting Office (GAO) Bid Protest Regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–03, FAR case 97–009.

SUPPLEMENTARY INFORMATION:

A. Background

The GAO published a final rule amending its Bid Protest Regulations in the **Federal Register** on July 26, 1996 (61 FR 39039). Several conforming amendments to FAR Part 33 are necessary to reflect the current GAO Bid Protest Regulations. The definition of ''day'' in FAR 33.101 is amended to exclude Saturdays, Sundays, and Federal holidays from being counted if such day is the last day of the period after the act, event, or default. FAR 33.104 is amended to require agencies to include a best estimate of the contract value in an agency report of a protest; and to require agencies to provide to all parties, at least 5 days prior to the filing of a report, a list of documents the agency intends to release or withhold, and reasons for proposed withholding. The time within which agencies are required to provide additional documents requested by a protester is reduced from 5 to 2 days. The time within which protesters or other interested parties are required to furnish comments on an agency report is reduced from 14 to 10 days, or from 7 to 5 days if an express option is used; or, if a hearing is held, from 7 to 5 days. Language is added to require a protester to file its claim for costs with the contracting agency within 60 days after receipt of GAO's recommendation that the agency pay the protester its costs.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

33.101 [Amended]

2. Section 33.101 is amended in paragraph (b)(1) under the definition of ''Day'' by removing the word ''legal'' and inserting ''Federal'' in its place; and by removing paragraph (c).

3. Section 33.104 is amended by—

a. Redesignating (a)(3)(iii) as (a)(3)(iv), and adding a new (a)(3)(iii);

b. Revising newly designated (a)(3)(iv)(B); removing (a)(3)(iv)(C); redesignating (a)(3)(iv)(D) as (a)(3)(iv)(C);

c. Replacing ''5'' with ''2'' in paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B);

d. Replacing ''14'' with ''10'' and ''7'' with ''5'' each time it appears in paragraph (a)(6);

e. Adding ''the agency'' before the word ''report'' in the third sentence of paragraph (e);

f. Revising paragraph (h) to read as follows:

33.104 Protests to GAO.

* * * * *

(a) * * *

(3) * * *

(iii) At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall provide to all parties and the GAO a list of those documents, or portions of documents, that the agency has released to the protester or intends to produce in its report, and those documents that the agency intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the agency's proposed disclosure or nondisclosure of the documents must be filed with the GAO and the other parties within 2 days after receipt of this list.

(iv) * * *

(A) * * *

(B) The contracting officer's signed statement of relevant facts, including a best estimate of the contract value, and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest

file that may be necessary to determine the merits of the protest; and

* * * * *

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant, and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) The protester shall file its claim for costs with the contracting agency within 60 days after receipt of the GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(3) The agency shall attempt to reach an agreement on the amount of costs to be paid. If the agency and the protester are unable to agree on the amount to be paid, the GAO may, upon request of the protester, recommend to the agency the amount of costs that the agency should pay.

(4) Within 60 days after the GAO recommends the amount of costs the agency should pay the protester, the agency shall notify the GAO of the action taken by the agency in response to the recommendation.

(5) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, ''Small business concern''), costs under paragraph (h)(2) of this section

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and 5 CFR 304.105; or

(ii) For attorney's fees that exceed $150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a ''reasonable'' level for attorney's fees for small businesses.

(6) Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs that have not yet been paid.

(7) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.

(8) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

[FR Doc. 97–31823 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 53

[FAC 97–03; FAR Case 95–034; Item XI]

RIN 9000–AH18

Federal Acquisition Regulation; Novation and Related Agreements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to facilitate the processing of novation and related agreements. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–03, FAR case 95–034.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to facilitate the process of novating contracts and to provide guidelines for contracting officers, while preserving the Government's interests in business combinations affecting its contracts. A proposed rule was published in the **Federal Register** on August 21, 1996 (61 FR 43294). Eighteen comments were received from six respondents. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because novation agreements generally affect only a relatively small number of large and small business entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 42 and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

2. Section 42.1203 is amended by revising paragraphs (b) and (c); redesignating paragraphs (d) through (f) as (f) through (h), respectively; and adding new paragraphs (d) and (e) to read as follows:

42.1203 Processing agreements.

* * * * *

(b) The responsible contracting officer shall—

(1) Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in 42.1204 (e) and (f) or 42.1205(a), as applicable;

(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and

(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible contracting officer shall determine whether or not it is in the Governments interest to recognize the proposed successor in interest on the basis of—

(1) The comments received from the affected contract administration offices and contracting offices;

(2) The proposed successor's responsibility under subpart 9.1, Responsible Prospective Contractors; and

(3) Any factor relating to the proposed successor's performance of contracts with the Government that the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (*e.g.*, long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the novation agreement.

* * * * *

3. Section 42.1204 is amended by—

a. Revising the section heading and paragraph (a) introductory text, (a)(1), and the introductory text of (a)(2);

b. Redesignating paragraphs (b), (c), (d), and (e) as (c), (e), (h), and (i), respectively;

c. Adding new paragraphs (b), (d), (f), and (g); and

d. Revising newly redesignated paragraph (e) to read as follows:

42.1204 Applicability of novation agreements.

(a) 41 U.S.C. 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of—

(1) All the contractor's assets; or

(2) The entire portion of the assets involved in performing the contract. (See 14.404–2(l) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include, but are not limited to—

* * * * *

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government (see 42.1203(e)).

* * * * *

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with subpart 9.5. If the responsible contracting officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures at 9.503.

(e) When a contractor asks the Government to recognize a successor in interest, the contractor shall submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, *e.g.*, purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date, the—

(i) Contract number and type;

(ii) Name and address of the contracting office;

(iii) Total dollar value, as amended; and

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the responsible contracting officer.

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets; *e.g.*, bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.

(7) Evidence that any security clearance requirements have been met.

(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.

NOVATION AGREEMENT

* * * * *

PART 53—FORMS

53.242–1 [Amended]

4. Section 53.242–1 is amended by revising ''42.1203(f)'' to read ''42.1203(h)''.

53.243 [Amended]

5. Section 53.243 is amended by revising ''42.1203(f)'' to read ''42.1203(h)''.

[FR Doc. 97–31824 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 47

[FAC 97–03; FAR Case 97–017; Item XII]

RIN 9000–AH78

Federal Acquisition Regulation; Commercial Bills of Lading, Small Package Shipments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to raise the threshold for requiring receipted freight bills for small package shipments, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–03, FAR case 97–017.

SUPPLEMENTARY INFORMATION:

A. Background

Based upon the benefits encountered during a 6-month test conducted by the Defense Finance and Accounting Service, Denver Center, this rule amends FAR 47.303–17 to raise the threshold for requiring receipted freight bills for small package shipments from $25 to $100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from $100 to $250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a revised paperwork burden reflecting a decrease in burden as a result of the increase to thresholds will be forwarded to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 47:

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 47 is amended as set forth below:

PART 47—TRANSPORTATION

1. The authority citation for 48 CFR part 47 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

47.303–17 [Amended]

2. Section 47.303–17 is amended in paragraph (d)(1) by removing ''$25'' and inserting ''$100''; in (d)(2) by removing ''$100'' and inserting ''$250''; and in the second sentence of paragraph (e) by replacing ''47.303–17(d)(1)'' with ''paragraph (d)(2) of this subsection'' and ''$25'' with ''$250''.

[FR Doc. 97–31825 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 97–05; FAR Case 96–022; Item XIII]

RIN 9000–AH74

Federal Acquisition Regulation; Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications and to conform the language in the form to the current quality assurance guidance in the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–05, FAR case 96–022.

SUPPLEMENTARY INFORMATION:

A. Background

Revision of the Standard Form 1406 is necessary due to the cancellation of military specifications, such as MIL–Q–9858 and MIL–I–45208, which are cited in the form, and to conform the language in the form to the current language in FAR Part 46.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart

will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 96–022), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

53.209–1 [Amended]

2. Section 53.209–1 is amended in paragraph (d) by revising ''(Rev 9/88)'' to read ''(Rev 11/97)''.

3. Section 53.301–1406 is revised to read as follows:

BILLING CODE 6820–EP–P

53.301–1406 Preaward Survey of Prospective Contractor—Quality Assurance.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR QUALITY ASSURANCE	SERIAL NO. *(For surveying activity use)*	OMB No.: 9000-0011 Expires: 10/31/2000
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

SECTION I - RECOMMENDATION

1. RECOMMEND: ☐ AWARD ☐ NO AWARD *(Provide full substantiation for recommendation in 4. NARRATIVE)*

2. IF PROSPECTIVE CONTRACTOR RECEIVES AWARD, A POST AWARD CONFERENCE IS RECOMMENDED. ☐ YES ☐ NO

3. AN ON-SITE SURVEY WAS PERFORMED. ☐ YES ☐ NO

4. NARRATIVE

IF CONTINUATION SHEETS ATTACHED - MARK HERE ☐

5. SURVEY MADE BY			6. SURVEY REVIEWING OFFICIAL		
A. SIGNATURE		B. DATE SIGNED	A. SIGNATURE		B. DATE REVIEWED
C. NAME			C. NAME		
D. OFFICE			D. OFFICE		
E. AREA CODE	F. TELEPHONE NUMBER	G. EXT.	E. AREA CODE	F. TELEPHONE NUMBER	G. EXT.

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Previous edition is not usable.

STANDARD FORM 1406 (REV. 11-97)
Prescribed by GSA
FAR (48 CFR) 53.209-1(d)

SECTION II - COMPANY AND SOLICITATION DATA

1. BRIEFLY DESCRIBE HOW QUALITY ASSURANCE RESPONSIBILITIES ARE ACCOMPLISHED.

2. QUALITY ASSURANCE OFFICIALS CONTACTED

A. NAME	B. TITLE	C. YEARS OF QUALITY ASSURANCE EXPERIENCE

3. APPLICABLE CONTRACT QUALITY REQUIREMENTS

A. NUMBER	B. TITLE	C. TAILORING *(If any)*

4. ☐ IDENTICAL OR ☐ SIMILAR ITEMS HAVE BEEN ☐ PRODUCED, ☐ SUPPLIED, OR ☐ SERVICED BY PROSPECTIVE CONTRACTOR

(If similar items, identify:)

SECTION III - EVALUATION CHECKLIST

STATEMENTS		YES	NO
1. These items (where applicable to the contract) are understood by the prospective contractor.	A. Exhibits, technical data, drawings, specifications, and approval requirements.		
	B. Preservation, packaging, packing, and marking requirements.		
	C. Other *(Specify)*		
2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.			
3. Used, reconditioned, or remanufactured material and former Government surplus material will be furnished by the prospective contractor. *(If Yes, explain in Section I NARRATIVE)*			
4. Prospective contractor will require unusual assistance from the Government. *(If Yes, explain in Section I NARRATIVE)*			
5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract? *(If No, explain in Section I NARRATIVE)*			
6. Quality verification personnel	NUMBER SKILLED / NUMBER SEMI-SKILLED		
7. Quality verification to production personnel ratio.	RATIO :		
THE FOLLOWING ARE AVAILABLE AND ADEQUATE. *(If not applicable, show "N/A" in "Yes" column.)*			
8. Inspection and test equipment, gauges, and instruments for first article and production *(including solicitation specified equipment).*			
9. Calibration/metrology program.			
10. Quality system procedures and controls.			
11. Control of specifications, drawings, changes and modifications, work/process instructions.			
12. System for determining inspection, test, and measurement requirements.			
13. Purchasing: Processes for selecting qualified suppliers and assuring the quality of purchased materials.			
14. Product identification, segregation, traceability, and maintenance.			
15. Government furnished property controls.			
16. Process controls.			
17. Nonconforming product: System for timely identification, disposition, correction of deficiencies, and corrective and preventative action.			
18. Preservation, storage, packaging, packing, marking, and delivery controls.			
19. Records *(such as: inspection, test, status, corrective actions, calibration, etc.)*			
20. Controls for investigation of customer complaints and correction of deficiencies.			
21. Design controls system.			
22. Computer software *(deliverable and/or non-deliverable)* quality assurance program.			
23. Management review and internal quality audits.			
24. Quality assurance training program.			
25. Installation and servicing quality assurance program.			
26. Statistical techniques.			

STANDARD FORM 1406 (REV. 11-97) BACK

[FR Doc. 97–31826 Filed 12–8–97; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 19, 42, and 53

[FAC 97–03; Item XIV]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections.

SUMMARY: This document makes technical corrections to FAR sections 1.201–1, 19.811–1, and 42.203. SF 33, SF 1435, SF 1436, and SF 1437 are being reissued in order to reflect changes to internal references as a result of the rewrite of Part 15 of the Federal Acquisition Regulation. SF 279 is being reissued to provide accounting for purchases under the commercial test.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 1, 19, 42, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 1, 19, 42, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

2. Section 1.201–1 is amended in the first sentence of paragraph (a) by removing the word ''Regulatory'' and inserting ''Regulations'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

3. Section 19.811–1 is amended in the introductory text of paragraph (c) by revising the first and second sentences to read as follows:

19.811–1 Sole source.

* * * * *

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in paragraphs (a) and (b) of this subsection, use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document shall contain the information in paragraphs (b) (1), (2), and (3) of this subsection. * * *

* * * * *

PART 42—CONTRACT ADMINISTRATION

42.203 [Amended]

4. Section 42.203 is amended at the end of paragraph (a) by removing ''4.201(c)'' and inserting ''4.201(d)'' in its place.

PART 53—FORMS

53.204–2 [Amended]

5. Section 53.204–2 is amended in paragraph (a) by revising the revision date to read ''(Rev. 10/97)''.

53.214 [Amended]

6. Section 53.214 is amended in paragraph (c) by revising the revision date to read ''(Rev. 9/97)''.

53.215–1 [Amended]

7. Section 53.215–1 is amended in paragraph (c) by revising the revision date to read ''(Rev. 9/97)''.

53.249 [Amended]

8. Section 53.249 is amended in paragraphs (a)(2), (a)(3), and (a)(4) by revising the revision dates to read ''(Rev. 9/97)'', and by removing the last sentence of each paragraph.

BILLING CODE 6820–EP–P

9. Section 53.301–33 is revised to read as follows:

53.301–33 Solicitation, Offer and Award.

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES

2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NUMBER

7. ISSUED BY	CODE	8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ *(Hour)* local time _____ *(Date)*

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE *(NO COLLECT CALLS)*			C. E-MAIL ADDRESS
		AREA CODE	NUMBER	EXT.	

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52.232-8)*	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)*:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NUMBER			☐ 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
AREA CODE	NUMBER	EXT.			

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 253(c) ( )	23. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)*	ITEM
24. ADMINISTERED BY *(If other than Item 7)* CODE	25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

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STANDARD FORM 33 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.214(c)

10. Section 53.301–279 is revised to read as follows:

53.301–279 Federal Procurement Data System (FPDS)—Individual Contract Action Report.

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
INDIVIDUAL CONTRACT ACTION REPORT

INTERAGENCY REPORT CONTROL NUMBER
0206-GSA-QU

1. REPORTING AGENCY CODE *(FIPS 95)(4 Pos.)*

2. CONTRACT NUMBER *(Left justified with no special characters) (15 Pos.)*

3. MODIFICATION NUMBER *(Left justified; cannot exceed 4 characters) (4 Pos.)*

4. CONTRACTING OFFICE ORDER NUMBER *(Left justified; cannot exceed 15 characters) (15 Pos.)*

5. CONTRACTING OFFICE CODE *(5 alpha-numeric character code) (5 Pos.)*

6. ACTION DATE *(4 digit calendar year and 2 digit month, e.g., 200012) (6 Pos.)*

7. TYPE OF DATA ENTRY *(1 Pos.)*
A. Original
B. Deleting
C. Correcting

8. REPORT PERIOD *(4 digit fiscal year and 1 digit quarter, e.g., 20001) (5 Pos.)*

9. KIND OF CONTRACT ACTION *(1 Pos.)*
A. Initial Letter Contract
B. Definitive Contract Superseding Letter Contract
C. New Definitive Contract
D. Purchase Orders/BPA Calls Using Simplified Acquisition Procedures
E. Order Under Single Award Indefinite Delivery Contract
F. Order Under BOA
G. Order/Modification Under Federal Schedule
H. Modification
J. Termination for Default
K. Termination for Convenience
L. Order Under Multiple Award Contract
Z. Initial Load of Federal Schedule Contract

10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION *(Right justified; round to nearest 1000; use lead zeros) (8 Pos.)*

11. TYPE OF OBLIGATION *(1 Pos.)*
A. Obligated
B. Deobligated

12. PRINCIPAL PRODUCT OR SERVICE *(FPDS Product Service Code Manual) (4 Pos.)*

13. PRINCIPAL STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE *(OMB SIC Manual) (4 Pos.)*

14. COMMERCIAL ITEM ACQUISITION *(1 Pos.)*
Y - Yes
N - No

15. CONTRACTOR NAME *(30 Pos.)*

16. CONTRACTOR IDENTIFICATION NUMBER *(9 Pos.)*

17a. PRINCIPAL PLACE OF PERFORMANCE *(State and City Code FIPS 55) (7 Pos.)*
STATE
CITY

17b. FOREIGN COUNTRY *(FIPS 10-3) (2 Pos.)*

18. CONTRACT FOR FOREIGN GOVT. OR INTERNATIONAL ORGANIZATION *(1 Pos.)*
Y - Yes
N - No

19. TARIFF OR REGULATED *(Pre-CICA) (1 Pos.)*
Y - Yes
N - No

20. MULTI-YEAR CONTRACT *(1 Pos.)*
Y - Yes
N - No

21. RESERVED FOR FPDS *(2 Pos.)*

22. COUNTRY OF MANUFACTURE *(FIPS 10-3) (2 Pos.)*

23. SYNOPSIS OF PROCUREMENT PRIOR TO AWARD *(1 Pos.)*
A. Synopsized prior to award
B. Not synopsized due to urgency
C. Not synopsized for other reason

24. TYPE OF CONTRACT OR MODIFICATION *(1 Pos.)*
A. Fixed-Price Redetermination
J. Fixed-Price
K. Fixed-Price with Economic Price Adjustment
L. Fixed-Price Incentive
R. Cost-Plus-Award-Fee
S. Cost - No Fee
T. Cost-Sharing
U. Cost-Plus-Fixed-Fee
V. Cost-Plus-Incentive
Y. Time and Materials
Z. Labor Hour

25. CICA APPLICABILITY *(1 Pos.)*
A. CICA Applicable
B. Purchase Orders/BPA Calls Using Simplified Acquisition Procedures
C. Subject to Statute Other Than CICA
D. Pre-CICA
E. Commercial Items Acquisition Under Test Program

26. SOLICITATION PROCEDURES *(Complete only if Item 25 = A) (1 Pos.)*
A. Full and Open Competition - Sealed Bid
B. Full and Open Competition - Competitive Proposal
C. Full and Open Competition - Combination
D. Architect - Engineer
E. Basic Research
F. Multiple Award Schedule
G. Alternative Sources
H. Reserved
J. Reserved
K. Set-Aside
L. Other Than Full and Open Competition

27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION *(Complete only if item 26 = L) (1 Pos.)*
A. Unique Source
B. Follow-on Contract
C. Unsolicited Research Proposal
D. Patent/Data Rights
E. Utilities
F. Standardization
G. Only One Source - Other
H. Urgency
J. Mobilization, Essential R&D Capability, or Expert Services
K. Reserved
L. International Agreement
M. Authorized by Statute
N. Authorized for Resale
P. National Security
Q. Public Interest

28. NUMBER OF OFFERS RECEIVED *(Complete only if item 25 = A or E) (1 Pos.)*
A. 1
B. 2-5
C. 6-10
D. 11-15
E. 16-20
F. 21-50
G. Over 50

29. EXTENT COMPETED *(1 Pos.)*
A. Competed Action
B. Not Available for Competition
C. Follow-on to Competed Action
D. Not Competed

30. TYPE OF CONTRACTOR *(1 Pos.)*
A. Small Disadvantaged Business
B. Other Small Business
C. Large Business
D. JWOD Nonprofit Agency
E. Nonprofit Educational Organization
F. Nonprofit Hospital
G. Other Nonprofit Organization
H. State/Local Govt - Educational
J. State/Local Govt - Hospital
K. Other State/Local Government
L. Foreign Contractor
M. Domestic Contractor Performing Outside U.S.
U. Historically Black College/University or Minority Institution (HBCU/MI)

31. WOMEN-OWNED BUSINESS *(1 Pos.)*
Y - Yes
N - No

32. PREFERENCE PROGRAM *(1 Pos.)*
A. Directed to JWOD Nonprofit Agency
B. 8(a) Contract Award
C. Reserved
D. Small Business Set-Aside
E. Reserved
F. Reserved
G. Buy Indian/Self-Determination
H. No Preference Program or Not Listed
J. Small Disadvantaged Business Set-Aside

33. SUBCONTRACTING PLAN *(Small, Small Disadvantaged, and Women-Owned Small Business) (1 Pos.)*
A. Required
B. Not Required

34. SUBJECT TO LABOR STATUTES *(1 Pos.)*
A. Walsh-Healey Act
B. Reserved
C. Service Contract Act
D. Davis-Bacon Act
E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon

35. ESTIMATED CONTRACT COMPLETION DATE *(4 digit calendar year and 2 digit month, e.g., 200012) (6 Pos.)*

36. CONTRACTOR'S TIN *(9 Pos.)*

37. COMMON PARENT'S NAME *(30 Pos.)*

38. COMMON PARENT'S TIN *(9 Pos.)*

39 RESERVED FOR FPDS *(4 Pos.)*

40. RESERVED FOR FPDS *(1 Pos.)*

41. RESERVED FOR FPDS *(5 Pos.)*

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM *(Applicable to AGR, DOD, DOE, DOI, DOT, EPA, GSA, HHS, NASA, and VA)*

42. DEMONSTRATION TEST PROGRAM *(1 Pos.)*
Y - Yes
N - No

43. EMERGING SMALL BUSINESS *(1 Pos.)*
Y - Yes
N - No

44. EMERGING SMALL BUSINESS RESERVE AWARD *(1 Pos.)*
Y - Yes
N - No

45. SIZE OF SMALL BUSINESS *(1 Pos.)*
NUMBER OF EMPLOYEES OR AVERAGE ANNUAL GROSS REVENUE
A. 50 or Less
B. 51 - 100
C. 101 - 250
D. 251 - 500
E. 501-750
F. 751 - 1,000
G. Over 1,000
M. 1,000,000 or Less
N. 1,000,001 - 2,000,000
P. 2,000,001 - 3,500,000
R. 3,500,001 - 5,000,000
S. 5,000,001 - 10,000,000
T. 10,000,001 - 17,000,000
Z. Over 17,000,000

46. RESERVED FOR FPDS *(10 Pos.)*

47. OPTIONAL REPORTED DATA ELEMENTS *(30 Pos.)*

48. FOR AGENCY INTERNAL USE

49. CONTRACTING OFFICER OR REPRESENTATIVE
a. TYPED NAME
b. SIGNATURE
c. TELEPHONE
AREA CODE
NUMBER
d. DATE SUBMITTED

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STANDARD FORM 279 (REV. 10-97)
Prescribed by GSA-FAR (48 CFR) 53.204-2(a)

11. Section 53.301–1435 is revised to read as follows:

53.301–1435 Settlement Proposal (Inventory Basis).

SETTLEMENT PROPOSAL (INVENTORY BASIS)

OMB No.: 9000-0012
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S).

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

If moneys payable under the contract have been assigned, give the following:

NAME OF ASSIGNEE

ADDRESS *(Include ZIP Code)*

COMPANY

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO.

CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

PROPOSAL NO.

CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED *(If not, explain below)*

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED ON HAND: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED ON HAND: INCLUDED IN THIS PROPOSAL (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED *(Partial termination only)* (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed) TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
1	METALS				
2	RAW MATERIALS *(other than metals)*				
3	PURCHASED PARTS				
4	FINISHED COMPONENTS				
5	MISCELLANEOUS INVENTORY				
6	WORK-IN-PROCESS				
7	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT				
8	OTHER COSTS *(from Schedule B)*				
9	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
10	**TOTAL *(Items 1 to 9 inclusive)***				
11	PROFIT *(explain in Schedule D)*				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	**TOTAL *(Items 10 to 12 inclusive)***				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	ACCEPTABLE FINISHED PRODUCT				
16	GROSS PROPOSED SETTLEMENT *(Items 13 thru 15)*				
17	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
18	NET PROPOSED SETTLEMENT *(Item 16 less 17)*				
19	ADVANCE, PROGRESS & PARTIAL PAYMENTS *(from Schedule H)*				
20	**NET PAYMENT REQUESTED *(Item 18 less 19)***				

(When the space provided for any information is insufficient, continue on a separate sheet.)

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Previous edition is unusable

STANDARD FORM 1435 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(2)

SCHEDULE A - ANALYSIS OF INVENTORY COST *(Items 4 and 6)*

Furnish the following information (unless not reasonably available) for inventories of finished components and work-in-progress included in this proposal:

	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIRECT EXPENSES	TOTAL
FINISHED COMPONENTS				
WORK-IN-PROGRESS				

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, and G.

SCHEDULE B - OTHER COSTS *(Item 8)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES *(Item 9)*

DETAIL OF EXPENSES	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT *(Item 11)*

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS *(Item 17)*

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in Item 15.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS *(Item 19)*			
DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and15.408 Table 15-2).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

12. Section 53.301–1436 is revised to read as follows:

53.301–1436 Settlement Proposal (Total Cost Basis).

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

OMB No.: 9000-0012
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S).

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

If moneys payable under the contract have been assigned, give the following:

NAME OF ASSIGNEE

ADDRESS *(Include ZIP Code)*

COMPANY

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO.

CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

PROPOSAL NO.

CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED *(If not, explain below)*

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED ON HAND: PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)	UNFINISHED OR NOT COMMENCED: SUBSEQUENTLY COMPLETED AND INVOICED* (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed) TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE *(from Schedule A)*				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT *(SF 1432)*				
5	OTHER COSTS *(from Schedule B)*				
6	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
7	**TOTAL COSTS *(Items 1 thru 6)***				
8	PROFIT *(Explain in Schedule D)*				
9	**TOTAL *(Items 7 and 8)***				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED*				
11	**TOTAL *(Item 9 less Item 10)***				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	**TOTAL *(Items 11 and 12)***				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	GROSS PROPOSED SETTLEMENT *(Items 13 thru 14)*				
16	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
17	NET PROPOSED SETTLEMENT *(Item 15 less 16)*				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS *(from Schedule H)*				
19	**NET PAYMENT REQUESTED *(Item 17 less 18)***				

*Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Column (b), (c), and (e), Section I.

NOTE: File inventory schedules (SF 1426, 1428, 1430, and 1432) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

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Previous edition is unusable

STANDARD FORM 1436 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(3)

SCHEDULE A - INDIRECT FACTORY EXPENSE *(Item 3)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B - OTHER COSTS *(Item 5)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES *(Item 6)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT *(Item 8)*

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS *(Item 16)*

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS *(Item 19)*			
DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

13. Section 53.301–1437 is revised to read as follows:

53.301–1437 Settlement Proposal for Cost—Reimbursement Type Contracts.

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS	OMB No.: 9000-0012 Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Acquisition Regulation. Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY	PROPOSAL NUMBER	CHECK ONE ☐ PARTIAL ☐ FINAL
STREET ADDRESS	GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.
CITY AND STATE *(Include ZIP Code)*	EFFECTIVE DATE OF TERMINATION	

ITEM (a)	TOTAL PREVIOUSLY SUBMITTED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL SUBMITTED TO DATE (d)
1. DIRECT MATERIAL	$	$	$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COST *(Items 1 thru 6)*	$	$	$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT *(Items 7 thru 10)*			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT *(Item 11 less 12)*	$	$	$
14. PRIOR PAYMENTS TO CONTRACTOR	$	$	$
15. NET PAYMENT REQUESTED *(Item 13 less 14)*	$	$	$

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

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Previous edition is unusable

STANDARD FORM 1437 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(4)

[FR Doc. 97–31827 Filed 12–8–97; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter I

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97–03 which amends the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97–03 which precedes this notice. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755.

LIST OF RULES IN FAC 97–03

Item	Subject	FAR Case	Analyst
I	Part 30 Deviations	97–014	Nelson.
II*	Information Technology Management Reform Act of 1996	96–319	Nelson.
III	Final Overhead Settlement	95–017	Klein.
IV*	Reorganization of FAR Part 13, Simplified Acquisition Procedures	94–772	Linfield.
V	Reporting Trade Sanction Exemptions	97–021	Linfield.
VI	New Mexico Gross Receipts and Compensating Tax	97–018	Moss
VII	Compensation of Certain Contractor Personnel	96–325	Nelson.
VIII	Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond	95–032	Nelson.
IX	Travel Reimbursement (Interim)	97–007	Nelson.
X	Protests to GAO	97–009	O'Neill.
XI	Novation and Related Agreements	95–034	Klein
XII	Commercial Bills of Lading, Small Package Shipments	97–017	Klein
XIII	Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance	96–022	Klein
XIV	Technical Amendments.		

Item I—Part 30 Deviations (FAR Case 97–014)

This final rule amends FAR 1.402 to remove the prohibition against authorizing deviations from FAR Part 30, Cost Accounting Standards Administration, except for subsections 30.201–3 and 30.201–4, or the Cost Accounting Standards Board rules and regulations.

Item II—Information Technology Management Reform Act of 1996 (FAR Case 96–319)

The interim rule published as Item I of FAC 90–41 is converted to a final rule. This rule implements the Information Technology Management Reform Act of 1996 (Division E of Public Law 104–106). The final rule differs from the interim rule in that it makes a clarifying revision to paragraph (c) of the definition of ''information technology'' at FAR 2.101.

Item III—Final Overhead Settlement (FAR Case 95–017)

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by (1) extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractor's fiscal year, (2) permitting extensions to the 6-month time period for exceptional circumstances only, and (3) providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

Item IV—Reorganization of FAR Part 13, Simplified Acquisition Procedures (FAR Case 94–772)

This final rule revises FAR Part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR Part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213–4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

Item V—Reporting Trade Sanction Exemptions (FAR Case 97–021)

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative of such exemptions within 30 days after contract award.

Item VI—New Mexico Gross Receipts and Compensating Tax (FAR Case 97–018)

This final rule amends FAR 29.401–6 to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation.

Item VII—Compensation of Certain Contractor Personnel (FAR Case 96–325)

The interim rule published as Item XI of FAC 90–45 is converted to a final rule with a minor clarifying amendment at FAR 31.205–6(p)(1). The rule

implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201). Section 809 places a Governmentwide ceiling of $250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during fiscal year 1997.

Item VIII—Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond (FAR Case 95–032)

This final rule amends the cost principle at FAR 31.205–18, Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs, and deletes FAR Subpart 42.10, Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs. The rule removes, for fiscal year 1996 and beyond, the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

Item IX—Travel Reimbursement (FAR Case 97–007)

This interim rule amends FAR 31.205–46 to raise, from $25 to $75, the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This change is consistent with a recent amendment to the Federal Travel Regulation.

Item X—Protests to GAO (FAR Case 97–009)

This final rule amends the protest procedures at FAR 33.101 and 33.104 to conform with revisions made to the General Accounting Office Bid Protest Regulations.

Item XI—Novation and Related Agreements (FAR Case 95–034)

This final rule amends FAR Subpart 42.12 to expand and clarify procedures for processing novation agreements, and for determining when use of a novation agreement is appropriate.

Item XII—Commercial Bills of Lading, Small Package Shipments (FAR Case 97–017)

This final rule amends FAR 47.303–17 to raise the threshold for requiring receipted freight bills for small package shipments from $25 to $100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from $100 to $250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

Item XIII—Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance (FAR Case 96–022)

This final rule revises Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications, and to conform the language in the form to the current language in FAR Part 46.

Item XIV—Technical Amendments

This document makes technical corrections to FAR 1.201–1, 19.811–1, and 42.203. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR Part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–31828 Filed 12–8–97; 8:45 am]

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federal register

Tuesday
December 9, 1997

Part III

Department of Labor

Wage and Hour Division

29 CFR Part 520 et al.

Employment of Student-Learners, Apprentices, Learners, Messengers, and Student Workers; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 520, 521, 522, 523 and 527

RIN 1215–AB10

Employment of Student-Learners, Employment of Apprentices, Employment of Learners, Employment of Messengers, and Employment of Student Workers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is removing the regulation found at 29 CFR Part 527 and consolidating the regulations found at 29 CFR Parts 520, 521, 522, and 523, into a single Part 520. These rules were promulgated under section 14(a) of the Fair Labor Standards Act (FLSA), and provided for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage to prevent the curtailment of employment opportunities. These workers include apprentices, messengers and learners, including student-learners and student-workers. Employers must apply for special certificates issued by the Wage and Hour Division of the U.S. Department of Labor which state the terms and conditions of employment at subminimum wages. Many of the provisions of these individual regulations were duplicative and have been merged into one comprehensive document. The language and context of the rules have been simplified, shortened and formatted to make them easier to use while the essential requirements of the regulations have been maintained. The substantive criteria used to determine an employer's eligibility to receive a certificate under these programs remain generally unchanged.

EFFECTIVE DATE: These rules are effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, D.C. 20210: telephone (202) 219–7640. This is not a toll free number. Copies of this final rule in alternative formats may be obtained by calling (202) 219–7640, (202) 219–4634 (TDD). The alternative formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This final rule contains reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The reporting requirements contained in §§ 520.403, 520.501 and 520.502 of this rule were submitted to and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB Control No. 1215–0192.

No comments were received from the public regarding this burden or these regulatory provisions.

No substantive changes have been made in this final rule which affect the information collection and recordkeeping requirements and estimated burdens previously submitted to OMB and discussed in the proposed rule.

II. Background

Section 14(a) of the FLSA provides for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage to prevent the curtailment of employment opportunities. These workers include messengers, learners (including student-learners and student-workers), and apprentices.

Separate regulations were established for each of these subminimum wage categories with many provisions common to all the separate rules. These rules were also issued before the enactment of the Administrative Procedure Act and other laws and regulations that impact the content of regulations. The regulations which are the subject of this final rule, formerly found at 29 CFR Parts 520, 521, 522, 523, and 527, were promulgated pursuant to the FLSA and establish a certificate system for employment of these classes of workers at subminimum wages. Employers must apply for special certificates issued by the Wage and Hour Division of the U.S. Department of Labor, which state the terms and conditions of employment at subminimum wages.

Under former Part 522, now consolidated into Part 520, learners could be employed at less than the applicable minimum wage in certain skilled occupations. Certificates specified the number and proportion of learners authorized on any date, the subminimum wage rates permitted during the learning period, and length of the learning period in each occupation (ranging by occupation from 160 to 960 hours, and normally limited to not more than one year; new or expanding plants not more than six months). Certificates were conditioned upon there being an inadequate supply of qualified, experienced workers and the applicant making reasonable efforts to recruit experienced workers. The use of learners could not create unfair competitive labor cost advantages nor depress wages or working standards for experienced workers in comparable work. Employers submitted separate applications for each establishment and demonstrated that efforts to hire experienced workers were ineffective.

Under former Part 520, student-learners were pupils at least sixteen years old (eighteen if employed in certain hazardous occupations) who were enrolled in an accredited school, college or university and who were employed part-time under a bona fide vocational training program approved by a State board of vocational education. Certified student-learners were required to be paid no less than 75 percent of the applicable minimum wage, with limits on the number of hours of employment training each week at subminimum wages. Employment of a student-learner could not have the effect of displacing an employee of the establishment, nor depress wages or working standards for experienced workers in comparable work, nor impair the development or continuation of apprenticeship standards in the occupation or industries. Separate applications had to be submitted for each student-learner, describing the vocational training program in detail and demonstrating how it related to the jobs to be performed by the student-learner.

Under former Part 527, student-workers were pupils enrolled in an educational institution who were at least 16 years old (18 if employed in certain hazardous occupations) and who were employed on a part-time basis in shops owned by the educational institution for the purpose of enabling the students to defray part of their school expenses. Student-workers employed under a special certificate were required to be paid no less than 75 percent of the applicable minimum wage. Certificates specified the number of students authorized on any day, the rates permitted during the training period, and length of the training period for each occupation (which were not to exceed one school year). Certificates were submitted by each educational institution seeking to employ student-workers. As discussed in Section IV of

this preamble, Part 527 has been deleted pursuant to this final rule.

Under former Part 521, now consolidated into Part 520, apprentices at least sixteen years old (eighteen if employed in certain hazardous occupations) could be employed at less than the applicable minimum wage in skilled trades under registered apprenticeship programs. Apprentices were required to receive a progressively increasing schedule of wages which averaged at least 50 percent of the journeyman level rate over the period of apprenticeship (one year or more [2,000 or more hours] of work experience). The Department of Labor's Bureau of Apprenticeship and Training (BAT) establishes criteria and registration procedures for both individual apprentices and employer apprenticeship plans.

Under former Part 523, now consolidated into Part 520, messengers employed primarily to deliver letters and messages could be paid subminimum wages to prevent curtailment of employment opportunities. Applications could be filed by an employer or an employee or group of employers or employees.

The use of these certificates was prevalent when the wages paid in many industries were equal to or very near the minimum wage. As the prevailing wage rates increased to levels well above the statutory minimum wage, fewer employees were willing to work at subminimum wage rates. Over the last twenty-five years, very few employers have applied for special certificates, except in the student-learner program.

The learner program, which includes learners, student-learners, and student-workers, historically was one of the largest subminimum wage programs. As wage rates rose in many industries employing learners and an adequate supply of experienced workers was available, the use of learner certificates declined. At its peak in 1962, over 2,200 certificates covering more than 46,000 learners were issued. No applications to employ learners have been received since 1995. The use of student-learner certificates rose to over 17,000 in 1975, but has fallen in recent years. Currently fewer than 800 student-learner certificates are issued each year. Because of the narrow focus of the student-worker program, the most certificates ever issued was 33 (covering 1,320 workers) in 1961.

About 900 apprentice certificates were issued in 1967, mostly in the Caribbean area (838). Regulations issued by the BAT no longer permit the payment of subminimum wages to apprentices. The Wage and Hour Division, therefore, has not issued any special certificates for apprentices since 1987.

On March 29, 1976, the Secretary of Labor presented a report to Congress in response to the directive of section 4(d)(2) of FLSA to conduct studies on the justification or lack thereof of each special exemption issued under section 14 of the Act. The Secretary reported that section 14(d), added by the 1974 FLSA Amendments, which made provision for a minimum wage and overtime exemption without requiring a special certificate for elementary or secondary school students employed by their schools, may have the impact of eliminating the need for the student-worker program. The Secretary recommended, however, that section 14(a) continue to make provisions for special employment of student-workers until the impact of section 14(d) could be evaluated.

No regulations regarding the provisions of section 14(d) were promulgated. In the absence of regulations, the Department decided to take no action with respect to public or private elementary or secondary school students employed by their schools in various school-related work programs if their employment complied with the FLSA child labor provisions. Since enactment of section 14(d), no student-worker certificates have been issued.

In his report of March 29, 1976, the Secretary of Labor also recommended that the provisions authorizing subminimum wages for messengers be deleted from the FLSA. He also determined that the special provisions for learners could no longer be justified and should be limited to student-workers and student-learners. The report also recommended that the provisions for apprentices be retained until the impact of proposed BAT regulations could be evaluated. No action was taken on these recommendations and the section 14 requirements remain in the FLSA; thus there is a continuing need for these rules.

III. Comments to the Proposed Rule

A Proposed Rule with a 60-day comment period was published in the **Federal Register** on February 14, 1997 (62 FR 7094). No public comments were received in response to the Proposed Rule. The Department is adopting that proposal with only one minor editorial modification in this final rule. That modification, the removal of the word ''agreement'' before the word ''contains'' in the definition of apprenticeship agreement, is being done to correct an inadvertent error and remove any confusion.

IV. Discussion

This final rule removes the regulation at 29 CFR Part 527, Employment of Student-Workers, and reserves the part. Section 14(d) of the FLSA makes provision for a minimum wage and overtime exemption for elementary or secondary school students employed by their schools where such employment is an integral part of the regular education program. In the absence of regulations regarding section 14(d), the Department has taken no action with respect to public or private elementary or secondary school students employed by their school in various school-related work programs if employed in compliance with the FLSA child labor provisions. Since section 14(d) of the FLSA was enacted in 1974, no applications for student-worker certificates have been submitted by any type of school, elementary, secondary or any other. Part 527 is therefore unnecessary.

Additionally, this final rule merges the regulations formerly at 29 CFR Parts 520, 521, 522, and 523 into one new Part 520 and reserves the remaining three sections. This final rule also eliminates repetition of text contained in each separate regulation. Those sections overtaken by requirements of the Administrative Procedure Act were also deleted. The essential requirements contained in the former regulations are maintained in this revision. The language and context of the regulations have been simplified, shortened, and formatted to make them easier to understand.

As discussed above, the use of special certificates to employ messengers, learners, and apprentices at subminimum wages has declined considerably. It is appropriate to replace extended pages of obsolete regulations by consolidating these rules. This final rule, where possible, supplants the language containing specific requirements with more general criteria common to all of the programs. The Department does not expect to increase the number of certificates issued under this final rule because the economic conditions stated above are unchanged.

The specific criteria formerly contained in 29 CFR Parts 520, 521, 522, and 523 will be replaced by the requirements of 29 CFR Part 520, subparts D and E. Applicants are now required to demonstrate that the criteria for issuance of special certificates have been met. Those situations where special certificates will not be issued have been clarified.

The final rule eliminates the previous industry-specific learning periods for learners and replaces them with a standardized period of 240 hours absent extraordinary circumstances relating to a particular occupation warranting a longer learning period. The final rule also removes the different learner program standards for new plants and established plants.

The requirement to publish in the **Federal Register** a list of learner certificates issued has been removed as they are so few in number in recent years and no purpose is served by the publication of such a list. Interested parties may contact the agency for this information. This final rule removes any requirement that a hearing be held when an interested party objects to a certificate being issued or denied and replaces it with an informal reconsideration procedure that is more responsive to such parties. The period for requesting reconsideration and review has been extended to 60 days to accommodate those programs that previously required publishing a list of certificates issued in the **Federal Register**. The final rule also removes a section which allowed nonregistered apprenticeship agreements to be submitted for consideration when applying for a special certificate. Only properly registered apprenticeship agreements will be accepted in the future.

The final rule permanently fixes, as the basis for establishing the special minimum wages that may be paid to messengers and learners (including student-learners) under section 14(a), the minimum wage applicable under section 6(a). This precludes combining the use of the youth opportunity wage established under section 6(g) with the special minimum wages authorized by section 14(a). The Department has determined that the minimum wage applicable under section 6(a), which is greater than the youth opportunity wage, is both a necessary and a sufficient basis to establish special minimum wages which prevent the curtailment of employment opportunities as required by section 14(a).

The final rule also permanently sets the subminimum wage rate that may be paid messengers and learners at 95 percent of the minimum wage required by section 6(a) of the FLSA. This reflects the historical difference between the minimum wage and the authorized subminimum wage rate for learners, but it has always been stated in these sections as a dollar amount (*i.e.* $4.10 per hour, $3.65 per hour). By setting the authorized subminimum wage at a fixed percentage of the applicable minimum wage, the Department will no longer have to amend these sections each time the minimum wage is changed. All certificates issued under this rule will list the authorized subminimum wage rate.

The final rule incorporates the Division's long-standing policy of limiting the availability of special certificates for messengers to those firms whose principal business is the delivery of such letters and messages.

The changes discussed above will have no significant effect on the current operation of these programs.

Executive Order 12866 and Significant Regulatory Actions

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. The consolidation of the current regulations at 29 CFR Parts 520, 521, 522, and 523, and the removal of Part 527 does not affect the current operation of any program and this action will not: (1) have an annual effect on the economy of $100 million or more or 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 a 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 Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Executive Order 12875 and Section 202 of the Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by either state, local and tribal governments in the aggregate, or by the private sector.

Regulatory Flexibility Analysis

This rule will not have a significant economic impact on a substantial number of small entities. The obligations and responsibilities established under the existing regulations will remain essentially the same under the final rule. The Department has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Therefore, no Regulatory Flexibility Analysis is required.

Document Preparation: This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 520

Clothing, Electronic products, Manpower training programs, Messengers, Minimum wages, Students, Vocational education.

29 CFR Part 521

Manpower training programs, Minimum wages, Vocational education, Wage and Hour Division.

29 CFR Part 522

Cigar and cigarettes, Clothing, Electronic products, Manpower training programs, Minimum wages, Wage and Hour Division.

29 CFR Part 523

Minimum wage, Messengers, Wage and Hour Division.

29 CFR Part 527

Minimum wages, Students, Wage and Hour Division.

Signed at Washington, D.C. on the 2nd day of December, 1997.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR Part 520, 29 CFR Part 521, 29 CFR Part 522, 29 CFR Part 523, and 29 CFR Part 527 are amended as set forth below.

PART 521—[REMOVED AND RESERVED]

1.–2. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by removing part 521.

PART 522—[REMOVED AND RESERVED]

3. Under the authority of Sec. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2–12, 60 Stat. 237–244 (5 U.S.C. 1001–1011), 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by removing part 522.

PART 523—[REMOVED AND RESERVED]

4. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214,

Title 29, Code of Federal Regulations is amended by removing part 523.

PART 527—[REMOVED AND RESERVED]

5. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by removing part 527.

6. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by revising part 520 to read as follows:

PART 520—EMPLOYMENT UNDER SPECIAL CERTIFICATE OF MESSENGERS, LEARNERS (INCLUDING STUDENT-LEARNERS), AND APPRENTICES

Subpart A—[Reserved]

Subpart B—What Are the General Provisions Governing the Employment of Messengers, Learners (Including Student-Learners), and Apprentices at Subminimum Wages?

Sec.
520.200 What is the legal authority for payment of wages lower than the minimum wage required by section 6(a) of the Fair Labor Standards Act?
520.201 How are those classifications of workers which may be paid subminimum wages under section 14(a) of the Fair Labor Standards Act defined?
520.202 How do persons who want to apply for a particular certificate find out what is needed?
520.203 What records does an employer have to keep when subminimum wage certificates are granted? How long do they have to be kept?
520.204 If someone does not agree with the Department of Labor's decision on a certificate, can the decision be appealed?
520.205 How do these rules affect other Federal, state and local laws and collective bargaining agreements?

Subpart C—Definitions

520.300 Definitions.

Subpart D—Messengers, Learners (Excluding Student-Learners), and Apprentices

520.400 Who are messengers, learners, and apprentices?
520.401 Are there any industries, occupations, etc. that do not qualify for a certificate to employ messengers, learners, or apprentices at subminimum wages?
520.402 How do I obtain authority to employ messengers, learners, or apprentices at subminimum wages?
520.403 What information is required when applying for authority to pay less than the minimum wage?
520.404 What must I demonstrate in my application for a messenger, learner, or apprentice certificate to receive a favorable review?
520.405 Must I notify my employees that I am applying for a certificate to employ messengers and/or learners at subminimum wages?
520.406 What happens once I have submitted my request for authorization to pay messengers, learners, or apprentices subminimum wages?
520.407 What is the subminimum wage for messengers and what must I do to comply with the terms of my certificate?
520.408 What is the subminimum wage for learners and what must I do to comply with the terms of my certificate?
520.409 When will authority to pay apprentices special minimum wages become effective and what is the special minimum wage rate?
520.410 How long does a messenger, learner, or apprentice certificate remain in effect?
520.411 Does a certificate authorizing payment of subminimum wages to messengers and/or learners remain in effect during the renewal process?
520.412 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep relating to the employment of messengers, learners, or apprentices under special certificate?

Subpart E—Student-Learners

520.500 Who is a student-learner?
520.501 How do I obtain authority to employ student-learners at subminimum wages?
520.502 What information must an application to employ student-learners at subminimum wages contain?
520.503 What must I demonstrate in my application for a student-learner certificate to receive a favorable review?
520.504 When will authority to pay student-learners subminimum wages become effective?
520.505 How will I be notified that my request to employ student-learners at subminimum wages has been denied and can I appeal the denial?
520.506 What is the subminimum wage for student-learners and what must I do to comply with the terms of my student-learner certificate?
520.507 How long does my certificate remain in effect?
520.508 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep when student-learners are employed?

Authority: Sec. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2–12, 60 Stat. 237–244; (5 U.S.C. 1001–1011); 52 Stat. 1068, as amended, 29 U.S.C. 214.

Subpart A—[Reserved]

Subpart B—What are the General Provisions Governing the Employment of Messengers, Learners (Including Student-Learners), and Apprentices at Subminimum Wages?

§ 520.200 What is the legal authority for payment of wages lower than the minimum wage required by section 6(a) of the Fair Labor Standards Act?

Section 14(a) of the Fair Labor Standards Act provides, in order to prevent curtailment of employment opportunities, for the payment of special minimum wage rates to workers employed as messengers, learners (including student-learners), and apprentices under special certificates issued by the Department of Labor.

§ 520.201 How are those classifications of workers which may be paid subminimum wages under section 14(a) of the Fair Labor Standards Act defined?

(a) A messenger is a worker who is primarily engaged in delivering letters and messages for a firm whose principal business is the delivery of such letters and messages.

(b) A learner is a worker who is being trained for an occupation, which is not customarily recognized as an apprenticeable trade, for which skill, dexterity and judgment must be learned and who, when initially employed, produces little or nothing of value. Except in extraordinary circumstances, an employee cannot be considered a ''learner'' once he/she has acquired a total of 240 hours of job-related and/or vocational training with the same or other employer(s) or training facility(ies) during the past three years. An individual qualifying as a ''learner'' may only be trained in two qualifying occupations.

(c) A student-learner is a student who is at least sixteen years of age, or at least eighteen years of age if employed in an occupation which the Secretary has declared to be particularly hazardous, who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a ''bona fide vocational training program'' as defined in subpart C of this part.

(d) An apprentice is a worker, at least sixteen years of age unless a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade through a registered

apprenticeship program. Training is provided through structured on-the-job training combined with supplemental related theoretical and technical instruction. This term excludes pre-apprentices, trainees, learners, and student-learners. The terms learner and student-learner are defined in subpart C of this part. Standards governing the registration of apprenticeship programs are established and administered by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT) and are found in Regulations, 29 CFR Part 29.

(e) Additional terms used in this part are defined in subpart C of this part.

§ 520.202 How do persons who want to apply for a particular certificate find out what is needed?

The application process, terms, conditions and requirements of certificates and other matters are discussed in subparts D and E of this part. Messengers, learners (excluding student-learners), and apprentices are discussed in subpart D of this part and student-learners in subpart E of this part.

§ 520.203 What records does an employer have to keep when subminimum wage certificates are granted? How long do they have to be kept?

(a) In addition to other records required under the recordkeeping requirements (part 516 of this chapter), the employer is required to keep records specific to certification under section 14(a) of the Fair Labor Standards Act. All workers employed under a subminimum wage certificate shall be designated as such on the employer's payroll records. Further recordkeeping requirements are described in each applicable subpart of this part (see §§ 520.412 and 520.508 of this part).

(b) Employers must maintain and preserve all required records for at least three years from the last date of employment under a subminimum wage program. The employer's copy of the application and the certificate shall also be maintained for three years. Such records shall be kept secure and accessible at the place of employment or where payroll records are customarily maintained. All records must be available for inspection and copying by the Administrator.

§ 520.204 If someone does not agree with the Department of Labor's decision on a certificate, can the decision be appealed?

(a) Any person, applicant, trade union, association, etc. who does not agree with action granting or denying a certificate (pursuant to §§ 520.406 and 520.505) may, within 60 days of that action or such additional time as the Administrator may allow, file with the Administrator a petition for review. The decision of the Administrator becomes final unless such a written request is timely filed.

(b) Such requests should contain a statement of the additional evidence which the person believes may materially affect the decision and establish that there were reasonable grounds for failure to present such evidence during the original certification process.

(c) If a request for reconsideration or review is granted, the Administrator, to the extent it is deemed appropriate, may afford other interested persons an opportunity to present data and views.

(d) The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this part.

§ 520.205 How do these rules affect other Federal, state and local laws and collective bargaining agreements?

No provision of this part, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or state law or municipal ordinance or collective bargaining agreement establishing higher standards.

Subpart C—Definitions

§ 520.300 Definitions.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, or his/her authorized representative.

Apparel industry means the manufacturing of the following products as referred to in subpart D of this part:

(1) Rainwear means the manufacture of waterproofed garments and raincoats from oiled cloth or other materials, whether vulcanized, rubberized, cravenetted, or otherwise processed.

(2) Leather and sheep-lined clothing means the manufacture of leather, leather-trimmed and sheeplined garments for men, women or children.

(3) Women's apparel division of the apparel industry for the manufacture of women's, misses', and juniors' dresses means the production of women's, misses' and juniors' dresses; washable service garments; blouses from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear and negligees from woven fabrics; corsets and other body supporting garments from any material; infants' and children's outerwear; and other garments similar to them.

(4) Robes, means the manufacture of robes from any woven material or from purchased knitted materials, including, without limitation, men's, women's and children's bath, lounging and beach robes and dressing gowns.

Apprentice means a worker, at least sixteen years of age unless a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade through a registered apprenticeship program. Training is provided through structured on-the-job training combined with supplemental related theoretical and technical instruction. This term excludes pre-apprentices, trainees, learners, and student-learners. The terms learner and student-learner are defined in this subpart.

Apprenticeship agreement means a written agreement between an apprentice and either his/her employer, or an apprenticeship committee acting as agent for employer(s), which contains the terms and conditions of the employment and training of the apprentice.

Apprenticeship committee means those persons designated by the sponsor to act for it in the administration of the program. A committee may be ''joint'', i.e., it is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be ''unilateral'' or ''non-joint'' and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

Apprenticeship program means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirements for a written apprenticeship agreement.

BAT means the Bureau of Apprenticeship and Training, Employment and Training Administration, United States Department of Labor.

Bona fide vocational training program means a program authorized and approved by a state board of vocational education or other recognized educational body that provides for part-time employment training which may be scheduled for a part of the work day or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial

information given as a regular part of the student-learner's course by an accredited school, college, or university.

Department means the United States Department of Labor.

Experienced worker means a worker whose total experience in an authorized learner occupation in the industry, including vocational training, within the past three years is equal to or greater than 240 hours or such other period as authorized by a learner certificate issued pursuant to the regulations in this part.

Experienced worker available for employment means an experienced worker residing within the area from which the plant/business customarily draws its labor supply or within a reasonable commuting distance of such area, and who is willing and able to accept employment in the plant/business; or an experienced worker residing outside of the area from which the plant/business customarily draws its labor supply, who has in fact made himself or herself available for employment at the plant/business.

FLSA means the Fair Labor Standards Act of 1938 as amended (29 U.S.C. 201 *et seq.*).

Learner means a worker who is being trained for an occupation, which is not customarily recognized as an apprenticeable trade, for which skill, dexterity and judgment must be learned and who, when initially employed produces little or nothing of value. Except in extraordinary circumstances, an employee cannot be considered a ''learner'' once he/she has acquired a total of 240 hours of job-related and/or vocational training with the same or other employer(s) or training facility(ies) during the past three years. An individual qualifying as a ''learner'' may only be trained in two qualifying occupations.

Learning period means a period of time measured in work hours and vocational training hours that is normally required to fully train an inexperienced worker in a particular occupation within an industry where the learner is employed. The learning period will not exceed 240 hours for any qualifying occupation except in extraordinary circumstances where the employer demonstrates that the occupation to be learned requires an extended period of specialized training.

Men's and boys' clothing industry means the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

Messenger means a worker who is primarily engaged in delivering letters and messages for a firm whose principal business is the delivery of such letters and messages.

Minimum wage means the wage rate required by section 6 of FLSA. For purposes of this part, subminimum wage rates are based exclusively on the applicable minimum wage provided by section 6(a) of FLSA.

Recognized apprenticeship agency means either a state apprenticeship agency recognized by the BAT, or if no such apprenticeship agency exists in the state, the BAT.

Registered apprenticeship program or agreement means a program or agreement which has been approved by a recognized apprenticeship agency as meeting the basic standards of apprenticeship adopted and published by BAT.

Secretary or Secretary of Labor means the Secretary of Labor, United States Department of Labor or his/her authorized representative.

Shoe manufacturing industry means the manufacture or partial manufacture of footwear from any material and by any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper, including the manufacturing of the following: athletic shoes; boots; boot tops; burial shoes; custom-made boots or shoes; moccasins; puttees, except spiral puttees; sandals; shoes completely rebuilt in a shoe factory; slippers. This term also includes the manufacture from leather or from any shoe-upper material of all cut stock and findings for footwear, including bows, ornaments, and trimmings. It also includes the manufacture of cutsoles; midsoles; insoles; taps; lifts; rands; toplifts; bases; shanks; boxtoes; counters; stays; stripping; sock linings; and heel pads. Shoe manufacturing also includes the manufacture of heels from any material except molded rubber, but not including the manufacture of woodheel blocks; the manufacture of cut upper parts for footwear, including linings, vamps and quarters; and the manufacture of pasted shoe stock; as well as the manufacture of boot and shoe patterns. However, the manufacture of cut stock and findings is included within this definition only when performed by companies engaged in the production of shoes who incorporate most of the cut stock and findings in the manufacture of their product(s).

Skilled trade means an apprenticeable occupation which possesses all of the following characteristics:

(1) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training.

(2) It is clearly identified and commonly recognized throughout an industry.

(3) It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.

(4) It requires related instruction to supplement the on-the-job training.

(5) It is not merely a part of an apprenticeable occupation and does not fall into any of the following categories: marketing; sales administration; administrative support; executive and managerial; professional and semi-professional occupations (this category covers occupations for which entrance requirements customarily include education of college level).

Standards of apprenticeship means the apprenticeship program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, which meets the requirements established by BAT, and is subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

State means any state of the United States or the District of Columbia or any territory or possession of the United States.

Student-learner means a student who is at least sixteen years of age, or at least eighteen years of age if employed in an occupation which the Secretary has declared to be particularly hazardous, who is receiving instruction in an accredited school, college or university and who is employed by an establishment on a part-time basis, pursuant to a bona fide vocational training program.

Subminimum wage means the rates which may be paid under temporary authorization or under certificate as provided by section 14(a) of FLSA and this part.

Vocational Training Program. See ''Bona fide vocational training program''.

Wage and Hour Division means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

Subpart D—Messengers, Learners (Excluding Student-Learners), and Apprentices

§ 520.400 Who are messengers, learners, and apprentices?

The terms messenger, learner, and apprentice are defined in subpart C of this part.

§ 520.401 Are there any industries, occupations, etc. that do not qualify for a certificate to employ messengers, learners, or apprentices at subminimum wages?

(a) Certificates to employ messengers at subminimum wages are available to only those establishments engaged in the business of providing messenger service, i.e., the delivery of letters and messages. Requests for such certificates are uniformly denied to applicants whose principal business purpose is not the delivery of messages and letters.

(b) All applications for special certificates authorizing the employment of learners at subminimum wage rates in the manufacture of products in the following industries shall be denied (definitions for all listed activities can be found in subpart C of this part):

(1) In the apparel industry:

(i) Rainwear

(ii) Leather and sheep-lined clothing

(iii) Women's apparel division of the apparel industry for the manufacture of women's misses', and juniors' dresses;

(iv) Robes

(2) Shoe manufacturing industry

(3) Men's and boys' clothing industry.

(c) No certificates will be granted authorizing the employment of learners at subminimum wage rates as homeworkers; in maintenance occupations such as guard, porter, or custodian; in office and clerical occupations in any industry; or in operations of a temporary or sporadic nature.

(d) Authorization to employ apprentices at subminimum wages will only be granted if permitted by the BAT regulations (29 CFR Part 29).

§ 520.402 How do I obtain authority to employ messengers, learners, or apprentices at subminimum wages?

(a) Employers wishing to employ messengers, learners, or apprentices as defined in subpart C of this part at subminimum wages must apply for authority to do so from the Administrator at the Wage and Hour Division's Regional Office having administrative jurisdiction over the geographic area in which the employment is to take place. To obtain the address of the Regional Office which services your geographic area, please contact your local Wage and Hour Office (under ''Department of Labor'' in the blue pages of your local telephone book).

(b) In the case of messengers, such application may be filed by an employer or group of employers. Preferential consideration will be given to applications filed by groups or organizations which are deemed to be representative of the interests of a whole industry or branch thereof.

§ 520.403 What information is required when applying for authority to pay less than the minimum wage?

(a) A separate application must be made for each plant or establishment requesting authorization for employment of messengers and/or learners at subminimum wages, on the official form furnished by the Wage and Hour Division, containing all information required by the form including:

(1) Information concerning efforts made by the applicant to obtain experienced workers in occupation(s) for which learners are requested;

(2) The occupations/industry in which the messenger(s) and/or learner(s) are to be employed;

(3) A statement explaining why employment of messenger(s) and/or learners(s) at subminimum wages is needed to prevent curtailment of employment opportunities;

(4) The number of messengers and/or learners the applicant anticipates employing at subminimum wages under special certificate;

(5) If requesting authorization for the employment of learners at subminimum wages for a learning period greater than 240 hours, information pertinent to the extraordinary circumstances necessitating such a request. While each such request will be considered on its own merit, it is anticipated that such authorizations would be limited to occupations requiring an extended period of specialized training;

(6) The number of messengers and/or learners hired at subminimum wages during the twelve-month period prior to making application;

(7) Total number of nonsupervisory workers in the particular plant or establishment for which a certificate is requested;

(8) The number of experienced workers in the learner occupations and their straight-time average hourly earnings during the last payroll period and the corresponding payroll period in the prior year; and

(9) The type of equipment to be used by learners.

(b) For apprentices, the employer or apprenticeship committee must submit a copy of the registered apprenticeship program.

(c) Any applicant may also submit such additional information as may be pertinent. Applications which fail to provide the information required by the form may be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new or revised application.

(The information collection requirements contained in paragraphs (a), (b) and (c) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.404 What must I demonstrate in my application for a messenger, learner, or apprentice certificate to receive a favorable review?

(a) The application must demonstrate that a certificate is necessary in order to prevent the curtailment of opportunities for employment.

(b) The issuance of a messenger and/or learner certificate must not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage rates or working standards of experienced workers performing work of a like or comparable character in the industry.

(c) Abnormal labor conditions such as a strike, lock-out, or other similar condition, must not exist at the plant or establishment for which a messenger and/or learner certificate is requested.

(d) It must be shown that an adequate supply of qualified experienced workers is not available for employment in those occupations for which authorization to pay subminimum wages to learners has been requested; that the experienced workers presently employed in the plant or establishment in occupations in which learners are requested are afforded an opportunity, to the fullest extent possible, for full-time employment upon completion of the learning period; and that learners are available for employment.

(e) Reasonable efforts must have been made to recruit workers paid at least the minimum wage in those occupations in which certificates to employ learners at subminimum wages have been requested. This includes the placement of an order with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office) not more than fifteen days prior to the date of application. Written evidence from such office that the order has been placed shall be submitted by the employer with the application.

(f) The occupation or occupations in which learners are to receive training must involve a sufficient degree of skill to necessitate an appreciable learning period.

(g) An apprenticeship program must conform with or substantially conform with the standards of apprenticeship as defined in subpart C of this part.

(h) There must be no serious outstanding violations involving the employee(s) for whom a certificate is being requested nor any serious outstanding violations of a certificate previously issued, nor any serious violations of the FLSA which provide

reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

§ 520.405 Must I notify my employees that I am applying for a certificate to employ messengers and/or learners at subminimum wages?

Upon making application for a messenger and/or learner certificate or for renewal thereof, an employer shall post a copy of the first page of the completed application form in a conspicuous place in each department of the plant or establishment where he/she proposes to employ messengers and/or learners at subminimum wage rates. Such notice shall remain posted until the application is acted upon by the Administrator.

(The information collection requirements contained in paragraphs (a), (b) and (c) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.406 What happens once I have submitted my request for authorization to pay messengers, learners, or apprentices subminimum wages?

(a) All applications submitted for authorization to pay wages lower than those required by section 6(a) of the FLSA will be considered and acted upon (issued or denied) subject to the conditions specified in §§ 520.403 and 520.404 of this part.

(b) If, in the case of messengers and/or learners, available information indicates that the requirements of this part are satisfied, the Administrator shall issue a special certificate which will be mailed to the employer. If a special certificate is denied, the employer shall be given written notice of the denial. If a messenger and/or learner certificate is denied, notice of such denial shall be without prejudice to the filing of any subsequent application.

(c) If, in the case of apprentices, the apprenticeship agreement and other available information indicate that the requirements of this part are satisfied, the Administrator shall issue a special certificate. The special certificate, if issued, shall be mailed to the employer or the apprenticeship committee and a copy shall be mailed to the apprentice. If a special certificate is denied, the employer or the apprenticeship committee, the apprentice and the recognized apprenticeship agency shall be given written notice of the denial. The employer shall pay the apprentice the minimum wage applicable under section 6(a) of the FLSA from the date of receipt of notice of such denial.

§ 520.407 What is the subminimum wage for messengers and what must I do to comply with the terms of my certificate?

(a) A messenger certificate, if issued, shall specify:

(1) The subminimum wage rate of not less than 95 percent of the applicable minimum wage required by section 6(a) of the FLSA; and

(2) The effective and expiration dates of the certificate.

(b) The employer shall post a copy of the messenger certificate during its effective period in a conspicuous place where it can be readily seen by employees.

(c) No messenger shall be hired under a messenger certificate while abnormal labor conditions such as a strike, lock-out, or other similar condition, exist.

§ 520.408 What is the subminimum wage for learners and what must I do to comply with the terms of my certificate?

(a) All learner certificates shall specify:

(1) The subminimum wage rate of not less than 95 percent of the applicable minimum wage required by section 6(a) of the FLSA;

(2) The number or proportion of learners authorized to be employed on any one day;

(3) The occupations in which learners may be employed;

(4) The authorized learning period of not more than 240 hours, except in extraordinary situations as discussed in § 520.403; and

(5) The effective and expiration dates of the certificate.

(b) Learners properly hired prior to the date on which a learner certificate expires may be continued in employment at subminimum wage rates for the duration of their authorized learning period under the terms of the certificate, even though the certificate may expire before the learning period is completed.

(c) The employer shall post a copy of the learner certificate during its effective period and thereafter until all authorized learners have completed their learning period(s). The certificate shall be posted in a conspicuous place in each department of the plant where learners are to be employed.

(d) No learners shall be hired under a learner certificate if, at the time the employment begins, experienced workers capable of equaling the performance of a worker of minimum acceptable skill are available for employment. Before hiring learners during the effective period of the certificate, the employer shall place an order for experienced workers with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office) or have such an active order on file. Written evidence that an order has been placed or is on active file shall be maintained in the employer's records.

(e) No learner shall be hired under a learner certificate while abnormal labor conditions such as a strike, lock-out, or other similar condition exist in the plant or establishment.

(f) For each individual learner, the number of hours of previous employment and hours of vocational or similar facility(ies) training must be deducted from the authorized learning period if within the past three years the learner has been employed or received vocational training in a given occupation and industry.

(g) If experienced workers are paid on a piece rate basis, learners shall be paid at least the same piece rates as experienced workers employed on similar work in the plant and shall receive earnings based on such piece rates whenever such earnings exceed the subminimum wage rates permitted in the certificate.

§ 520.409 When will authority to pay apprentices special minimum wages become effective and what is the special minimum wage rate?

(a) An apprenticeship program which has been registered with a recognized apprenticeship agency shall constitute a temporary special certificate authorizing the employment of an apprentice at the wages and under the conditions specified in such program until a special certificate is issued or denied. This temporary authorization is, however, conditioned on the requirement that within 90 days from the beginning date of employment of the apprentice, the employer or the apprenticeship committee shall send one copy of each apprenticeship agreement, with evidence of registration, to the appropriate Regional Office of the Wage and Hour Division.

(b) The wage rate specified by the apprenticeship program becomes the special minimum wage rate that must be paid unless the Administrator issues a certificate modifying the terms and conditions of employment of apprentices at special minimum wages.

§ 520.410 How long does a messenger, learner, or apprentice certificate remain in effect?

(a) Messenger and/or learner certificates may be issued for a period of not longer than one year.

(b) Each special apprentice certificate shall specify the conditions and limitations under which it is granted, including the periods of time during

which subminimum wage rates may be paid pursuant to a registered apprenticeship program.

(c) No certificate may be issued retroactively.

(d) The Administrator may amend the provisions of a certificate when necessary to correct omissions or defects in the original certificate or reflect changes in this part.

§ 520.411 Does a certificate authorizing payment of subminimum wages to messengers and/or learners remain in effect during the renewal process?

(a) Application for renewal of a messenger and/or learner certificate shall be made on the same form as described in this section and employees shall be advised of such renewal application in the same manner as explained in § 520.405. No effective messenger and/or learner certificate shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with the requirements, and filed with and received by the Administrator not less than fifteen nor more than thirty days prior to the expiration date. A final determination means either the granting of or initial denial of the application for renewal of a messenger and/or learner certificate, or withdrawal of the application. A ''properly executed application'' is one which contains the complete information required on the form, and the required certification by the applicant.

(b) A renewal certificate will not be issued unless there is a clear showing that the conditions set forth in section 520.404 of this part still prevail.

§ 520.412 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep relating to the employment of messengers, learners, or apprentices under special certificate?

(a) Each worker employed as a messenger, learner, or apprentice under a certificate shall be designated as such on the employer's payroll records. All such messengers, learners, or apprentices shall be listed together as a separate group on the payroll records, with each messenger's, learner's, or apprentice's occupation being shown.

(b) At the time learners are hired, the employer shall also obtain and keep in his/her records a statement signed by each employee showing all applicable experience which the learner had in the employer's industry, including vocational training, during the preceding three years. The statement shall contain the dates of such previous employment, names and addresses of employers, the occupation or occupations in which the learner was engaged and the types of products upon which the learner worked. The statement shall also contain information concerning pertinent training in vocational training schools or similar training facilities, including the dates of such training and the identity of the vocational school or training facility. If the learner has had no applicable experience or pertinent training, a statement to that effect signed by the learner shall likewise be kept in the employer's records.

(c) The employer shall maintain a file of all evidence and records, including any correspondence, pertaining to the filing or cancellation of job orders placed with the local State or Territorial Public Employment Service Office pertaining to job orders for occupations to be performed by learners.

(d) Every employer who employs apprentices under temporary or special certificates shall preserve for three years from the last effective date of the certificate copies of the apprenticeship program, apprenticeship agreement and special certificate under which such an apprentice is employed.

(e) Every apprenticeship committee which holds a certificate under this part shall keep the following records for each apprentice under its control and supervision:

(1) The apprenticeship program, apprenticeship agreement and special certificate under which the apprentice is employed by an employer;

(2) The cumulative amount of work experience gained by the apprentice, in order to establish the proper wage at the time of his/her assignment to an employer; and

(3) A list of the employers to whom the apprentice was assigned and the period of time he/she worked for each employer.

(f) The records required in this section, including a copy of the application(s) submitted and any special certificate(s) issued, shall be kept and made available for inspection for at least three years from the expiration date of the certificate(s).

Subpart E—Student-Learners

§ 520.500 Who is a student-learner?

The term student-learner is defined in subpart C.

§ 520.501 How do I obtain authority to employ student-learners at subminimum wages?

(a) Employers wishing to employ student-learners at subminimum wages must apply for authority to do so from the Administrator at the Wage and Hour Division's Regional Office having administrative jurisdiction over the geographic area in which the employment is to take place. To obtain the address of the Regional Office which services your geographic area, please contact your local Wage and Hour Office (under ''Department of Labor'' in the blue pages of your local telephone book).

(b) Application must be made on the official form furnished by the Wage and Hour Division and must be signed by the employer, the appropriate school official and the student-learner. A separate application must be filed by the employer for each student-learner the employer proposes to employ at subminimum wages.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.502 What information must an application to employ student-learners at subminimum wages contain?

Student-learner applications must contain:

(a) A statement clearly outlining the vocational training program and showing, particularly, the processes in which the student-learner will be engaged when in training on the job;

(b) A statement clearly outlining the school instruction directly related to the job;

(c) The total number of workers employed in the establishment;

(d) The number and hourly wage rates of experienced workers employed in the occupation in which the student-learner is to be trained;

(e) The hourly wage rate or progressive wage schedule which the employer proposes to pay the student-learner;

(f) The age of the student-learner;

(g) The period of employment training at subminimum wages;

(h) The number of hours of employment training a week and the number of hours of school instruction a week;

(i) A certification by the appropriate school official that the student named on the application form will be receiving instruction in an accredited school, college, or university and will be employed pursuant to a bona fide vocational training program, as defined in subpart C of this part. The certification by the school official must satisfy the following conditions:

(1) The application must be properly executed in conformance with § 520.501 of this subpart;

(2) The employment training must conform with the provisions of § 520.503 (a), (c), (d), and (g) and paragraphs (a) and (c) of § 520.506;

(3) The occupation must not be one for which a student-learner application was previously submitted by the employer and a special certificate was denied by the Administrator.

(The information collection requirements contained in paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.503 What must I demonstrate in my application for a student-learner certificate to receive a favorable review?

Each student-learner application must demonstrate that:

(a) The training program under which the student-learner will be employed is a bona fide vocational training program as defined in subpart C of this part;

(b) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment;

(c) The student-learner is at least sixteen years of age, or at least eighteen years of age if employed in any occupation which the Secretary has declared to be particularly hazardous (see part 570, subpart E, of this chapter, but note the specific exemptions for student-learners in several of the orders);

(d) The occupation for which the student-learner is receiving preparatory training requires a sufficient degree of skill to necessitate a substantial learning period;

(e) The training is not for the purpose of acquiring manual dexterity and high production speed in repetitive operations;

(f) The employment of a student-learner will not have the effect of displacing a worker employed in the establishment;

(g) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character;

(h) The occupational needs of the community or industry warrant the training of student-learners;

(i) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of the FLSA by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued;

(j) The issuance of such a certificate would not tend to prevent the development of apprenticeship programs in accordance with the regulations applicable thereto (subpart D of this part) or would not impair established apprenticeship standards in the occupation or industry involved; and

(k) The number of student-learners to be employed in one establishment is not more than a small proportion of its work force.

§ 520.504 When will authority to pay student-learners subminimum wages become effective?

(a) Certification by the appropriate school official on an application for a special student-learner certificate shall constitute a temporary authorization. This temporary authorization is effective from the date such application is forwarded to the Wage and Hour Division in conformance with § 520.501.

(b) At the end of 30 days, this application shall become the permanent special student-learner certificate unless, after review, the Administrator denies the application, issues a certificate with modified terms and conditions, or expressly extends the period of review.

§ 520.505 How will I be notified that my request to employ student-learners at subminimum wages has been denied and can I appeal the denial?

(a) If, after review, an application is denied, notification of denial will be made to the appropriate school official, the employer and the student. This notification will occur within 30 days following the date such application was forwarded to the Wage and Hour Division, unless additional time for review is considered necessary or appropriate.

(b) If additional time for review is considered necessary or appropriate, the proper school official, the employer, and the student shall be so notified. To the extent feasible, the Administrator may provide an opportunity to other interested persons to present data and views on the application before denying a special student-learner certificate.

(c) Whenever a notification of denial is mailed to the employer, such denial shall be without prejudice to any subsequent application, except under the circumstances referred to in § 520.502(i)(3).

(d) Section 520.204 of this part describes the procedures for requesting reconsideration of a decision to grant or deny a certificate.

§ 520.506 What is the subminimum wage for student-learners and what must I do to comply with the terms of my student-learner certificate?

(a) The special minimum wage rate paid to student-learners shall be not less than 75 percent of the applicable minimum under section 6(a) of the FLSA.

(b) Compliance with items listed for favorable review of a student-learner application (§ 540.503) must be demonstrated.

(c)(1) The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of school instruction, shall not exceed 40 hours, except that authorization may be granted by the Administrator for a greater number of hours if found to be justified by extraordinary circumstances.

(2) When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate; provided,

(i) The total hours worked shall not exceed 8 hours on any such day, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked on such day.

(3) During the school term, when school is not in session for the entire week, the student-learner may work at his/her employment training a number of hours in the week in addition to those authorized by the certificate; provided,

(i) The total hours shall not exceed 40 hours in any such week, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked in such week.

(d) A special student-learner certificate shall not constitute authorization to pay a subminimum wage rate to a student-learner in any week in which he/she is employed for a number of hours in addition to the number authorized in the certificate, except as provided in paragraphs (c)(1), (2), and (3) of this section.

§ 520.507 How long does my certificate remain in effect?

(a) A special student-learner certificate shall be effective for a period not to exceed the length of one school year unless a longer period is found to be justified by extraordinary circumstances. These circumstances must be explained in detail at the time of application. While each such request

will be considered on its own merit, it is anticipated that such authorizations would be limited to occupations requiring an extended period of specialized training;

(b) No certificate shall authorize employment training beyond the date of graduation.

(c) No special student-learner certificate may be issued retroactively.

§ 520.508 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep when student-learners are employed?

Any worker employed as a student-learner shall be identified as such on the payroll records, with each student-learner's occupation and rate of pay being shown. Notations should be made in the employer's records when additional hours are worked by reason of school not being in session.

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Part IV

Securities and Exchange Commission

17 CFR Parts 230, 239, 270, and 274

Technical Revisions to the Rules and Forms Regulating Money Market Funds; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270 and 274

[Release Nos. 33–7479; IC–22921; S7–29–96]

RIN 3235–AE17

Technical Revisions to the Rules and Forms Regulating Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to rules and forms under the Securities Act of 1933 and the Investment Company Act of 1940 that govern money market funds. Technical amendments to rule 2a–7 under the Investment Company Act of 1940, the rule regulating money market funds, among other things, revise terminology used in the rule to reflect common market usage and resolve certain interpretive issues under the rule. Amendments to the advertising rules applicable to money market funds, among other things, clarify the formula used by money market funds to calculate yield.

DATES: *Effective Date:* The rule and form amendments adopted in this Release will become effective February 10, 1998. *Compliance Date:* See Section III of this Release.

FOR FURTHER INFORMATION CONTACT: David P. Mathews, Senior Counsel, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting technical amendments to rule 2a–7 [17 CFR 270.2a–7] (''rule 2a–7'' or the ''rule'') under the Investment Company Act of 1940 [15 USC 80a–1, *et seq.*] (''1940 Act''), the rule governing the operations of money market funds (''funds'').[1] The Commission is adopting conforming amendments to rules 2a41–1, 12d3–1, 17a–9 and 31a–1 under the 1940 Act [17 CFR 270.2a41–1, 270.12d3–1, 270.17a–9 and 270.31a–1] to reflect the amendments to rule 2a–7. The Commission also is adopting amendments to rule 482 [17 CFR 230.482] under the Securities Act of 1933 [15 USC 77a, *et seq.*] (''1933 Act'') and rule 34b–1 under the 1940 Act [17 CFR 270.34b–1]; and to Forms N–1A [17 CFR 239.15A and 274.11A], N–3 [17 CFR 239.17a and 274.11b] and N–4 [17 CFR 239.17b and 274.11c].

I. Technical Amendments to Rule 2a–7

A. Background

On March 21, 1996, the Commission adopted amendments to rule 2a–7 under the 1940 Act (''1996 Amendments'') to tighten the rule's risk-limiting conditions imposed on tax exempt money market funds and to address the treatment under the rule of certain instruments, such as asset backed securities.[2] These risk-limiting conditions include requirements that a fund limit itself to investing in high quality securities[3] and that the fund's portfolio be diversified.[4] After the adoption of the 1996 Amendments, industry participants raised numerous questions concerning the application of the amendments in different contexts. The Commission thereafter suspended the compliance date of certain of the 1996 Amendments pending the proposal and adoption of technical amendments to address these concerns.[5]

On December 10, 1996, the Commission issued a release proposing technical amendments to rule 2a–7 (''Proposing Release'').[6] The proposed amendments would: (1) codify certain interpretive views expressed by the Division of Investment Management;[7] (2) revise terminology used in the rule to reflect common market usage; (3) modify certain of the 1996 Amendments so that the rule's treatment of certain instruments (*e.g.,* guarantees) more closely reflects the treatment of those instruments by the financial markets; and (4) make certain other technical corrections. The Commission also proposed amendments to clarify the Commission's advertising rules regarding how money market funds calculate current yield and represent short-term total return in conjunction with current yield quotations.

The Commission received comments on the proposed amendments from seventeen commenters, including nine mutual fund complexes.[8] Commenters supported the proposed technical amendments to rule 2a-7, and suggested further amendments to certain provisions of the rule primarily relating to the treatment of asset backed securities. Most commenters that addressed the proposed amendments to the Commission's advertising rules relating to money market fund yield and total return generally supported them. The Commission is adopting the technical amendments substantially as proposed, with certain modifications that reflect, in part, many of the commenters' suggestions. The Commission also is establishing a new compliance date for the 1996 Amendments, as further amended by the technical amendments adopted in this Release.[9]

B. Discussion

1. Guarantees

a. Definition of ''Guarantee''. Rule 2a-7 currently characterizes certain features that enhance the credit or liquidity of portfolio securities as ''puts'' and ''unconditional puts.''[10] To clarify

[1] Unless otherwise noted, all references to ''rule 2a–7, as amended,'' or any paragraph of the rule, will be to 17 CFR 270.2a–7 as amended by this Release.

[2] Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] (''Release 21837''). Unless otherwise noted, all references to the ''1996 Amendments'' in this Release are to rule 2a–7 as adopted in Release 21837. The compliance date for the 1996 Amendments to rule 2a–7 was suspended pending the adoption of technical amendments. See *infra* note 5 and accompanying text.

[3] The portfolio or credit quality provisions of the rule generally limit funds to investments in U.S. dollar-denominated securities that present minimal credit risks and that are, at the time of acquisition, ''eligible securities'' as defined by the rule. See paragraph (c)(3) of rule 2a–7, as amended (''portfolio quality standards'' or ''credit quality standards''). ''Eligible security'' is defined in paragraph (a)(10) of rule 2a–7, as amended.

[4] The diversification provisions of the rule generally limit the amount of assets that a fund may invest in a single issuer of securities, and the amount of assets that may be subject to credit enhancements, such as letters of credit or puts, provided by the same credit enhancement provider. See paragraph (c)(4) of rule 2a–7, as amended (''diversification standards'').

[5] Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 22135 (Aug. 13, 1996) [61 FR 42786 (Aug. 19, 1996)]. The Commission suspended the 1996 Amendments' compliance date for rules 2a–7, 2a41–1, 12d3–1 and 31a–1 under the 1940 Act. [17 CFR 270.2a–7, 2a41–1, 12d3–1 and 31a–1]. The compliance date was not suspended with respect to the adoption of rule 17a–9 under the 1940 Act [17 CFR 270.17a–9] and the 1996 Amendments' revisions of the rules and forms relating to money market fund disclosure, advertising and reporting.

[6] Technical Revisions to the Rules and Forms Regulating Money Market Funds, Investment Company Act Release No. 22383 (Dec. 10, 1996) [61 FR 66621 (Dec. 18, 1996)] (''Proposing Release'').

[7] See Investment Company Institute (pub. avail. May 9, 1996).

[8] The comment letters and a summary of the comments prepared by the Commission staff are available to the public and are included in File No. S7–29–96.

[9] The new compliance date is discussed *infra* in Section III.B. of this Release.

[10] The 1996 Amendments defined a ''put'' as the right to sell a specified underlying security within a specified period of time at a specified exercise price that may be sold, transferred or assigned only with the underlying security. An ''unconditional put'' was defined as a put (including any guarantee, financial guarantee (bond) insurance, letter of credit or similar unconditional credit enhancement) that

terminology used in rule 2a-7, the Commission proposed to replace these terms with a new term—''guarantee''—that would include a wide-range of arrangements designed to unconditionally support the credit of the issuer of a security.[11] Commenters generally supported the proposed amendments, which the Commission is adopting substantially as proposed.[12]

b. Credit Substitution. Since 1986, rule 2a-7 has permitted a fund to rely exclusively on the credit quality of the issuer of an ''unconditional demand feature'' in determining whether a security meets the rule's credit quality standards.[13] The 1996 Amendments also permitted a fund to exclude from the rule's issuer diversification standards a security subject to an unconditional demand feature provided by a person that does not control, or is not controlled by or under common control with, the issuer of the security (''non-controlled person'').[14] Reflected in this approach is the recognition that the holder of a security typically relies exclusively on the credit quality of the issuer of the unconditional demand feature in deciding to invest in the security.

In addition to enhancing credit quality, money market funds also rely on demand features to shorten the maturities of adjustable rate securities or provide a source of liquidity.[15] Because of the significance of demand features to a money market fund's ability to maintain a stable net asset value, the 1996 Amendments further provided that a demand feature is not eligible for fund investment unless (i) The demand feature (or the issuer of the demand feature) is rated by an NRSRO (''Rating Requirement'');[16] and (ii) arrangements are in place for a fund holding a security subject to a demand feature to be given notice in the event of a change in the identity of the issuer of the demand feature (''Notification Requirement'').

The Commission proposed to extend these provisions to other types of guarantees commonly held by funds, such as bond insurance, letters of credit and similar unconditional guarantees.[17] Like securities subject to unconditional demand features, securities subject to guarantees typically trade on the basis of the credit of the guarantor, rather than the issuer. Commenters strongly supported the proposed amendments, which the Commission is adopting as proposed.[18]

Under the rule as amended, a fund holding a security subject to a guarantee (as defined in the rule) may rely exclusively on the credit quality of the issuer of the guarantee in determining whether the security meets the rule's credit quality standards.[19] In addition, securities subject to guarantees issued by non-controlled persons are not subject to the rule's issuer diversification standards.[20]

c. Rating Requirement for Guarantees. The 1996 Amendments precluded funds from investing in securities subject to demand features (whether unconditional or conditional) that have not received a short-term rating from an NRSRO. The Commission proposed, in light of its proposal to extend the rule's treatment of unconditional demand features to all guarantees, to extend the Rating Requirement to guarantees, subject to certain exceptions.[21] Commenters generally supported the proposal, which the Commission is adopting substantially as proposed.

Under rule 2a–7, as amended, all guarantees must be rated by an NRSRO,[22] except (i) a guarantee issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the guarantee,[23] (ii) a guarantee with respect to a repurchase agreement (''repo'') that is collateralized fully,[24] (iii) a guarantee issued by the

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by its terms would be readily exercisable in the event of default in payment of principal or interest on the underlying security. *See* paragraphs (a)(16) and (a)(27) of rule 2a-7, as adopted by the 1996 Amendments.

[11] See Proposing Release, *supra* note , at n.7 and accompanying text.

[12] Under the new definition, a guarantee is any unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), principal plus accrued interest when due upon default. Paragraph (a)(15) of rule 2a-7, as amended. In order to permit guarantees that are payable at any time, the Commission has eliminated a requirement in the proposed definition that the issuer of the guarantee be obligated to pay upon default ''at a specified time.'' The Commission also is adopting amendments to the credit quality and diversification provisions of the rule to incorporate the new term ''guarantee,'' as discussed *infra* in Sections I.B.1.b. and c. of this Release. The definition of ''guarantee'' is for purposes of rule 2a-7 only, and is not intended to have any effect on the status of these investments under other provisions of the 1940 Act or under other federal securities laws.

[13] See Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 21, 1986)]. A ''demand feature'' means (i) a feature exercisable either: (A) at any time on no more than 30 calendar days' notice, or (B) at specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or (ii) a feature permitting the holder of an asset backed security unconditionally to receive principal and interest within 397 calendar days of making demand. An ''unconditional demand feature'' is a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities. See paragraphs (a)(8) and (a)(26) of rule 2a-7, as amended.

[14] Under the 1996 Amendments, a security subject to an unconditional demand feature from a person in a control relationship with the issuer of the security (*i.e.*, one that controls, is controlled by or under common control with the issuer) remains subject to the issuer diversification standards in order to reduce a fund's exposure to credit risks presented by a single economic enterprise. See Release 21837, *supra* note 2, at nn.42–47 and accompanying text.

[15] Tax exempt funds, for example, typically invest in long-term adjustable rate securities subject to demand features. The interest rates on these securities periodically adjust to reflect short-term rates. The demand features permit funds to demand payment of the security at relatively short intervals, and if unconditional, also serve to enhance credit quality—thus providing the basis for making the securities eligible for money market fund investment.

[16] ''NRSRO'' is the acronym used in rule 2a–7 to stand for a ''nationally recognized statistical rating organization.'' See paragraph (a)(17) of rule 2a–7, as amended. NRSROs are designated as such by the Commission's Division of Market Regulation through the no-action letter process for purposes of the Commission's net capital rule [17 CFR 240.15c3–1].

[17] Proposing Release, *supra* note 6, at nn. 8–16 and accompanying text.

[18] See paragraphs (c)(3)(iii) (determination of whether a security meets the rule's credit quality standards may be based exclusively on the credit quality of the security's guarantee); (c)(4)(i) (excluding securities subject to guarantees from non-controlled persons from the rule's issuer diversification standards); (a)(10)(iii)(A) (extending the Rating Requirement to guarantees); (a)(10)(iii)(B) (extending the Notification Requirement to guarantees); and (a)(16) (definition of ''guarantee issued by a non-controlled person'') of rule 2a–7, as amended. The amended rule also permits a fund that holds a security subject to a guarantee and a conditional demand feature to substitute the rating of the guarantee for the rating of the underlying security. Paragraph (c)(3)(iv)(C) of rule 2a–7, as amended. Consistent with the amended rule, however, a fund must also consider the rating of the conditional demand feature in evaluating the credit quality of the entire instrument. Paragraph (c)(3)(iv)(A) of rule 2a–7, as amended.

[19] Paragraph (c)(3)(iii) of rule 2a–7, as amended.

[20] Paragraph (c)(4)(i) of rule 2a–7, as amended. Guarantees, however, are subject to the guarantee and demand feature diversification standards of paragraphs (c)(4)(iii), (c)(4)(iv) and (c)(5) of rule 2a–7, as amended. A security subject to a guarantee that is provided by a person in a control relationship with the issuer of the security remains subject to the rule's issuer diversification standards. See paragraphs (a)(16) (definition of ''guarantee issued by a non-controlled person'') and (c)(4)(i) of rule 2a–7, as amended.

[21] Proposing Release, *supra* note 6, at nn. 17–24 and accompanying text.

[22] Paragraph (a)(10)(iii)(A) of rule 2a–7, as amended. Unlike the 1996 Amendments, which required a short-term rating, the amended rule allows any rating from an NRSRO to satisfy the Rating Requirement.

[23] Paragraph (a)(10)(iii)(A)(*1*) of rule 2a–7, as amended. The Commission proposed to exclude this type of guarantee from the Rating Requirement because a guarantor that guarantees securities issued by a person in a control relationship with the guarantor may not be in the business of lending its credit, and such a requirement may be burdensome and result in a diminished supply of high quality, eligible securities available for money market fund investment.

[24] Paragraph (a)(10)(iii)(A)(*2*) of rule 2a–7, as amended. The Commission has relaxed the Rating

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U.S. Government,[25] or (iv) a guarantee not relied upon for quality, maturity or liquidity purposes.[26] Conditional demand features, which are not within the definition of a ''guarantee'' under the amended rule, are not subject to the Rating Requirement.[27]

d. Demand Features and Guarantees Not Relied Upon. The 1996 Amendments permitted a fund that is not relying on a particular put to disregard that put for purposes of meeting rule 2a–7's put and demand feature diversification standards. The Commission is revising the rule to extend this provision to guarantees, and to expand the provision to permit funds to disregard a demand feature or a guarantee that is not relied upon to satisfy the rule's credit quality or maturity standards, or for liquidity, for all purposes under the rule.[28]

2. Diversification and Credit Quality Standards Applicable to Issuers

a. Second Tier Securities. Rule 2a–7 provides that a taxable fund may not invest more than one percent of its total assets in second tier securities issued by a single issuer.[29] In the case of tax exempt funds, this one percent limitation on investments in second tier securities applies only to second tier ''conduit securities'' that are issued by municipalities, but whose ultimate obligors are not government or municipal entities.[30] The Commission is adopting the proposed amendments to the rule that clarify that these limitations are not applicable to a security that is guaranteed by a non-controlled person.[31] Securities subject to guarantees from non-controlled persons are subject only to the rule's guarantee and demand feature diversification standards.[32]

b. Repurchase Agreements. Rule 2a–7 permits a fund to ''look-through'' a repo to the underlying collateral and disregard the counterparty in determining compliance with the rule's diversification standards if the obligation of the counterparty is ''collateralized fully.'' The 1996 Amendments sought to define ''collateralized fully'' to limit the collateral to that which could be liquidated promptly even in the event of bankruptcy of the counterparty.

Because of questions concerning the treatment of cash and other types of collateral not specifically addressed in the 1996 Amendments, the Commission proposed to revise the ''look-through'' provisions of the rule to focus on the treatment of the repo under applicable insolvency law rather than exclusively on the type of collateral. Under the proposed amendments, a repo would be ''collateralized fully'' if (i) the collateral consists entirely of cash, Government securities, or other securities that are rated in the highest rating category by the requisite NRSROs, and (ii) upon an event of insolvency with respect to the seller, the repo qualifies under a provision of applicable insolvency law providing an exclusion from any ''general stay'' of creditors rights against the seller.[33]

Commenters supported the proposed revisions, but three commenters urged that the rule's language be modified to refer to an ''automatic stay'' rather than a ''general stay.'' These commenters pointed out that even repos protected from automatic stays under federal insolvency law may be subject to a court-ordered general stay obtained by the Securities Investor Protection Corporation (''SIPC'') or the Federal Deposit Insurance Corporation (''FDIC''). Because no provision of insolvency law protects a purchaser of a repo from such orders, the proposed amendments might have precluded money market funds from relying on the rule's ''look-through'' provision for most repos, even though it is the policy of both SIPC (as to broker-dealer counterparties) and FDIC (as to bank counterparties) generally to allow the prompt liquidation of repos in insolvency proceedings.[34]

The Commission is adopting the proposed amendments, revised in part to reflect the commenters' suggestions.[35] The Commission notes that, under the revised rule, a fund entering into a repo collateralized by Government securities (which most are) should be able to conclude that the repo qualifies for ''look-through'' treatment (assuming the

Requirement with respect to guarantees of repos that are ''collateralized fully.'' One commenter noted that funds often rely on unconditional puts (*i.e.*, ''guarantees'' under the amended rule's terminology) with respect to ''term repos''—which are repos for periods longer than one day. The puts could be exercised if a repo counterparty's credit quality deteriorated or to cover short-term cash outflows. The issuers of unconditional puts with respect to term repos are typically government securities dealers that are not rated by NRSROs. Since a repo that is ''collateralized fully'' already has significant protection from the risk of a counterparty's default or insolvency, requiring puts (or guarantees) of such repos to be rated would add little additional protection, and could cause funds to forgo a beneficial method of liquidity enhancement. See *infra* Section I.B.2.b. of this Release (treatment of repos that are ''collateralized fully'').

[25] Paragraph (a)(10)(iii)(A)(*3*) of rule 2a–7, as amended; see *infra* Section I.B.2.e. of this Release (discussing guarantees issued by the U.S. Government).

[26] Paragraph (c)(5) of rule 2a–7, as amended; see also *infra* Section I.B.1.d. of this Release (demand features and guarantees not relied upon).

[27] A conditional demand feature is any demand feature that is not an unconditional demand feature. Paragraph (a)(6) of rule 2a–7, as amended.

[28] Paragraph (c)(5) of rule 2a–7, as amended. A fund holding securities subject to demand features or guarantees that are not being relied upon for credit quality, maturity or liquidity must establish written procedures requiring periodic re-evaluations of this determination. Paragraph (c)(9)(ii) of rule 2a–7, as amended. Funds are not required to establish procedures concerning demand features and guarantees not relied upon if they do not hold such instruments. *Id.*

[29] A ''second tier security'' is an eligible security that is not a first tier security. Paragraph (a)(22) of rule 2a–7, as amended. ''First tier securities'' are (i) securities that have received short-term debt ratings in the highest category from the requisite NRSROs; (ii) comparable unrated securities; (iii) securities issued by money market funds; and (iv) Government securities. Paragraph (a)(12) of rule 2a–7, as amended. ''Requisite NRSROs'' means (i) any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or (ii) if only one NRSRO has issued a rating with respect to a security or class of debt obligations of an issuer, that NRSRO. Paragraph (a)(21) of rule 2a–7, as amended.

[30] ''Conduit securities'' are issued to finance non-government projects, such as private hospitals, housing projects, or industrial development projects. See paragraph (a)(7) of rule 2a–7, as amended (definition of ''conduit security'').

[31] Paragraphs (c)(4)(i)(C) (*1*) and (*2*) of rule 2a–7, as amended. Rule 2a–7 also limits a taxable fund and a tax exempt fund to investing no more than five percent of total assets in second tier securities and second tier conduit securities respectively (''five percent quality test''). Paragraph (c)(3)(ii) of rule 2a–7, as amended (portfolio quality standards—second tier securities). The amendments do not make substantive changes to the five percent quality test. Thus, a taxable fund, for example, could not invest more than five percent of its total assets in second tier securities subject to a second tier demand feature. The amendments, however, reorganize the rule text to include the five percent quality test in paragraph (c)(3) of the rule, which addresses portfolio quality standards, rather than paragraph (c)(4), which addresses diversification standards.

[32] Paragraphs (c)(4)(iii) and (c)(4)(iv) of rule 2a–7, as amended.

[33] Proposing Release, *supra* note 6, at nn. 30–36 and accompanying text.

[34] The United States Bankruptcy Code [11 U.S.C. 559] protects certain repos from the automatic stay provision, but provides that SIPC may obtain a court order barring the closeout of repo transactions with member broker-dealer firms. As a matter of policy, however, SIPC honors repos and allows their liquidation under most circumstances. See Letter dated February 4, 1986, from Michael E. Don, Deputy General Counsel of SIPC, to Robert A. Portnoy, Deputy Executive Director and General Counsel of the Public Securities Association. FDIC, as conservator or receiver for insolvent depository institutions, similarly has the ability to avoid contracts entered into by such institutions, but may not avoid transfers of property in connection with repos under most circumstances. See 12 U.S.C. 1821(e)(8)(A), (C) and (D); FDIC Statement of Policy on Qualified Financial Contracts (Dec. 12, 1989).

[35] Paragraph (a)(5)(iv) of rule 2a–7, as amended. Commenters also suggested that the text of this provision refer only to applicable ''federal'' insolvency law. Although repos entered into by funds typically involve domestic counterparties subject to federal insolvency law, funds may enter into repos with non-U.S. counterparties that are not subject to federal insolvency laws. Therefore, the amended rule continues to apply to any applicable insolvency law.

other requirements of the rule are met), while funds wishing to enter into repos using less traditional forms of collateral may rely on opinions of bankruptcy counsel.[36]

c. Refunded Securities. Money market funds often invest in ''refunded securities,'' which are securities the payment for which is funded and secured by Government securities placed in an escrow account. Rule 2a–7 permits a fund to ''look-through'' refunded securities to the escrowed Government securities in determining its compliance with the rule's issuer diversification standards under certain conditions.[37] One condition contained in the 1996 Amendments required certification by an independent public accountant that the escrowed Government securities, or any subsequent substitution of the escrowed securities, would satisfy all payments of principal, interest and applicable premiums on the refunded securities (collectively, the ''accountant's certification''). The Proposing Release noted that NRSROs, in rating refunded securities, typically require an independent third party to make the same determination.[38] Therefore, the Commission proposed, and is now adopting, an amendment to the rule eliminating the accountant's certification requirement if a refunded security has received a rating from an NRSRO in the highest category for debt obligations.[39]

d. Three-Day Safe Harbor. Rule 2a–7 permits a taxable or national fund to invest up to twenty-five percent of its total assets in the first tier securities of a single issuer for up to three business days (''three-day safe harbor''). The Commission proposed, and is adopting, amendments that restore unintentionally omitted language from the rule text stating that a fund relying on the three-day safe harbor may not make more than one investment in reliance on the safe harbor at any time during the three day period.[40]

e. Government Guarantees. Two commenters suggested that the Commission exclude guarantees issued by the U.S. Government from the rule's guarantee and demand feature diversification standards as finally amended, and thus treat government guarantees in the same manner as securities issued directly by the U.S. Government.[41] The Commission is amending the demand feature and guarantee diversification standards accordingly.[42]

f. Definition of ''Rated Security''. Two commenters recommended that the Commission adopt a new defined term, ''rated security,'' which would permit rule 2a–7's definitions of ''unrated security,'' ''eligible security'' and ''first tier security'' to be shortened and clarified. The Commission is adopting the new term ''rated security'' and amending other provisions in the rule to incorporate the new term.[43]

3. Asset Backed Securities and Synthetic Securities

The 1996 Amendments revised rule 2a–7 to accommodate asset backed securities and synthetic securities (collectively ''ABS''). Rule 2a–7 defines an ABS as a fixed income security[44] issued by a ''special purpose entity'' substantially all of the assets of which consist of ''qualifying assets.''[45] Rule 2a–7 provides separate credit quality,[46] diversification[47] and maturity[48] standards for ABSs. The ABSs covered by the rule include interests in pools of receivables, such as credit card debt, as well as short-term synthetic tax exempt securities.[49]

a. Rating Requirement. In recognition of the independent legal, structural and credit analysis conducted by NRSROs before assigning a rating to an ABS, the

[36] In addition, a money market fund must evaluate the repo counterparty's creditworthiness in order to minimize the risk that money market funds will enter into repos with parties that present a serious risk of becoming involved in bankruptcy proceedings. The Commission previously published a release setting forth the conditions under which the Division of Investment Management would not recommend enforcement action under section 12(d)(3) of the 1940 Act [15 U.S.C. 80a–12(d)(3)] (limiting fund investments in certain securities-related businesses) if an investment company entered into a repo with persons engaged in securities-related businesses. Securities Trading Practices of Registered Investment Companies, Investment Company Act Release No. 13005 (Feb. 2, 1983) [48 FR 5824 (Feb. 9, 1983)] (''Repo Release''). Among other things, the Repo Release requires that the repo be ''fully collateralized.'' The definition of ''fully collateralized'' in the Repo Release does not include all of the conditions in rule 2a–7. A money market fund entering into a repo that is ''collateralized fully'' within the meaning of paragraph (a)(5) of rule 2a–7, as amended, will be deemed to meet the ''fully collateralized'' requirement of the Repo Release. Investment companies other than money market funds are not required to comply with this provision of rule 2a–7 to be deemed to hold repos that are ''fully collateralized'' for purposes of the Repo Release.

[37] Paragraph (c)(4)(ii)(B) of rule 2a–7, as amended. This ''look-through'' treatment would not be available to refunded securities subject to a swap agreement (*i.e.*, the payments from the escrowed Government securities are exchanged for payments made by a swap counterparty) because the swap counterparty, rather than the escrowed Government securities, acts as the ultimate source of payment for the refunded securities. See J.P. Morgan Structured Obligations Corp. (pub. avail. July 27, 1994); see generally *infra* Section I.B.3.d. of this Release (swap arrangements).

[38] See, *e.g.*, Standard & Poor's Municipal Finance Criteria, 176–77 (1996).

[39] Paragraph (a)(20)(iii) of rule 2a–7, as amended (definition of ''refunded security'').

[40] Paragraph (c)(4)(i)(A) of rule 2a–7, as amended. The three-day safe harbor is not available for single state funds. Single state funds, however, are required to be diversified only as to seventy-five percent of their assets, and so have available a twenty-five percent basket to accommodate purchases in excess of five percent of fund assets. Paragraph (c)(4)(i)(B) of rule 2a–7, as amended.

[41] A security guaranteed as to principal and interest by a U.S. Government agency is a ''Government security'' as defined in section 2(a)(16) of the 1940 Act [15 U.S.C. 80a–2(a)(16)] and paragraph (a)(14) of rule 2a–7, as amended. Investments in Government securities are excluded from the rule's issuer diversification standards because they are presumed to present little, if any, credit risks. The same rationale applies to a security guaranteed by a U.S. Government agency, which by definition also is a ''Government security.''

[42] Paragraph (c)(4)(iii) of rule 2a–7, as amended. Guarantees issued by the U.S. Government are deemed to be first tier securities. Paragraph (a)(12)(iv) of rule 2a–7, as amended (definition of ''first tier security'').

[43] A ''rated security'' is defined generally as (i) a security (or the issuer with respect to a comparable security) that has received a short-term rating from an NRSRO; or (ii) a security subject to a guarantee if the guarantee (or the guarantor with respect to a comparable guarantee) has received a short-term rating from an NRSRO. A security is not a rated security, however, if it is subject to an external credit support agreement that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement, or the credit support agreement has received a short-term rating. Paragraph (a)(19) of rule 2a–7, as amended. The Commission is making conforming amendments to paragraphs (a)(10) (definition of ''eligible security'') and (a)(12) (definition of ''first tier security'') of rule 2a–7, as amended, and amending the definition of ''unrated security.'' Under the amended definition, an ''unrated security'' is a security that is not a ''rated security.'' Paragraph (a)(28) of rule 2a–7, as amended.

[44] For purposes of rule 2a–7's definition of ''asset backed security,'' the term ''fixed income security'' has the same meaning as that term is defined in rule 3a–7(b)(2) under the 1940 Act [17 CFR 270.3a–7(b)(2)]. Rule 3a–7 excludes structured financings, such as ABSs, from the definition of ''investment company.''

[45] Paragraph (a)(3) of rule 2a–7, as amended. Paragraph (a)(3) defines ''special purpose entity'' as a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle holders to receive payments from the cash flows of the ''qualifying assets.'' Paragraph (a)(3) defines ''qualifying assets'' as either fixed or revolving financial assets that by their terms convert into cash within a finite time period.

[46] Paragraph (a)(10)(ii)(B) of rule 2a–7, as amended.

[47] Paragraph (c)(4)(ii)(D) of rule 2a–7, as amended.

[48] Paragraph (d) of rule 2a–7, as amended.

[49] A synthetic security is created typically by placing a long-term fixed rate municipal bond into a trust that issues short-term variable or floating rate securities subject to a conditional demand feature. This process effectively converts long-term fixed rate bonds into short-term variable or floating rate demand instruments that meet the rule's maturity requirements. Synthetic securities were developed to address a shortage in the supply of short-term tax exempt securities eligible for money market fund investment. See Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] at nn.100–05 and accompanying text (''Release 19959'') (discussing the development and characteristics of synthetic securities).

1996 Amendments required that all ABSs purchased by money market funds receive a rating from an NRSRO.[50] In light of the role that NRSROs have played in the development of structured finance, the Commission believed that this ABS rating requirement was appropriate and would not be burdensome.

The Commission proposed to further amend the rule to exclude from this rating requirement ABSs substantially all of the qualifying assets of which consist of municipal securities.[51] The Commission was persuaded by the assertions of industry participants that, as applied to these ABSs, the rating requirement was burdensome and unnecessary.[52] Commenters generally supported the amendment, which the Commission is adopting as proposed.[53]

b. Diversification Standards. i. Look-Through to Secondary ABSs. Rule 2a–7 treats the special purpose entity as the issuer of the ABS and requires the rule's issuer diversification standards to be met with respect to the special purpose entity. The rule contains an exception to this treatment, which requires a fund to ''look-through'' the special purpose entity to any issuer of qualifying assets whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the special purpose entity (''ten percent obligor''). For diversification purposes, a fund must treat these ten percent obligors as if they issued a proportionate amount of the special purpose entity.[54] The ''look-through'' to ten percent obligors is designed to ensure that a fund does not invest indirectly more than five percent of its assets in a particular issuer.

Some or all of the qualifying assets of certain ABSs (''primary ABSs'') also consist of other ABSs (''secondary ABSs''). The Commission proposed amendments to clarify that a ten percent obligor of a primary ABS that is also the issuer of secondary ABSs would be deemed to have issued a portion of the assets of the primary ABS that such secondary ABSs represent. For purposes of identifying ten percent obligors, the proposed amendments provided that a fund should ''continue down the chain'' of ten percent obligors until a special purpose entity with no ten percent obligors is reached.[55] Commenters supported this general approach, which the Commission is adopting, but raised several concerns that have led the Commission to further revise and clarify the rule.

One commenter observed that the benefits and materiality of the required ''look-through'' to secondary ABSs diminish rapidly. This commenter asserted that the risks posed by remote special purpose entities are likely to be outweighed by the costs incurred by funds to create compliance systems that identify, and treat as proportionate issuers, ten percent obligors beyond those comprising the qualifying assets of secondary ABSs. The Commission agrees and has amended the ABS ''look-through'' provision so that, instead of ''continuing down the chain'' indefinitely, funds are required to identify and treat as proportionate issuers of a primary ABS only ten percent obligors of the primary ABS and ten percent obligors of any secondary ABSs.[56]

Another commenter urged that a particular type of ABS issuer, a ''restricted special purpose entity,'' be excluded from treatment as a ten percent obligor under the rule, and thus not be counted for diversification purposes. A ''restricted special purpose entity'' is one that does not issue its ABSs to anyone other than another specific ABS issuer. For example, a company that provides financing for automobile purchasers may establish a restricted special purpose entity to securitize its automobile loans. The restricted special purpose entity will only sell ABSs to another special purpose entity that issues ABSs to money market funds or other investors. No diversification risk would appear to be posed to funds in this instance because funds cannot directly or indirectly invest in the restricted special purpose entity (*i.e.,* a secondary ABS) other than through the purchase of ABSs from a particular primary ABS issuer.[57] The Commission has decided to further amend the rule to exclude restricted special purpose entities from treatment as ten percent obligors.[58]

ii. Demand Features and Guarantees Securing Obligations of Ten Percent Obligors. The Commission is adopting a proposed amendment to clarify that in the case of any ten percent obligors deemed to be issuers for purposes of the rule's diversification standards, any demand features or guarantees supporting the obligations of the ten percent obligors are treated as being held by the fund and are subject to the rule's demand feature and guarantee diversification standards.[59]

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[50] The 1996 Amendments excluded unrated ABSs from the definition of an ''eligible security.''

[51] Proposing Release, *supra* note, at nn.41–43 and accompanying text.

[52] Industry participants noted that when ABSs consist of a large pool of financial assets, such as credit card receivables, they may not be susceptible to conventional means of credit risk analysis because credit quality is based on an actuarial analysis of a pool of financial assets, rather than a single issuer. The credit analysis for synthetic structures and municipal pools whose qualifying assets consist of one or a few municipal issuers, however, is typically no different than that required for a security directly issued by a municipality. Since many synthetic securities are not rated, applying the ABS rating requirement to them would have restricted the available supply of ABSs suitable for money market fund investment. ABSs involving large pools of financial assets, on the other hand, are typically rated.

[53] Paragraph (a)(10)(ii)(B) of rule 2a–7, as amended. An ABS subject to a guarantee is not itself required to be rated. Under rule 2a–7, as amended, an ABS subject to a guarantee that has received a short-term rating is considered a ''rated security.'' Paragraph (a)(19) of rule 2a–7, as amended. Moreover, an ABS subject to a guarantee may be determined to be an eligible security based solely on whether the guarantee is an eligible security. Paragraph (c)(3)(iii) of rule 2a–7, as amended.

[54] Paragraph (c)(4)(ii)(D)(*1*)(*i*) of rule 2a–7, as amended.

[55] Proposing Release, *supra* note, at nn. 48–50 and accompanying text. The approach set forth in the Proposing Release was illustrated in materials prepared by the staff of the Division of Investment Management and made available at the 1996 ICI Conference on Money Market Fund Regulation. See Materials for 1996 ICI Conference on Money Market Fund Regulation: Asset Backed Securities and Synthetic Securities—Application of Paragraph (c)(4)(vi)(A)(*4*) of Rule 2a–7 (May 9, 1996).

[56] Paragraphs (c)(4)(ii)(D)(*1*)(*i*) and (*ii*) of rule 2a–7, as amended. Under this provision, funds must ''look through'' to any ten percent obligor of a primary ABS, and to any ten percent obligor of a secondary ABS, and treat each such obligor as an issuer of a portion of the primary ABS. Funds need not, however, ''look-through'' to the qualifying assets of any ten percent obligor of a ''tertiary ABS'' (*i.e.,* a ten percent obligor of a secondary ABS that is itself a special purpose entity issuing ABSs) for purposes of compliance with the rule's diversification standards. Although the rule does not specifically prohibit a multi-layered ABS designed to avoid the ''look-through'' to secondary ABSs, the Commission would collapse the multiple layers of such an ABS and view remote ten percent obligors as proportionate issuers for purposes of determining compliance with the rule's issuer diversification standards. The Appendix to this Release illustrates the operation of the ''look-through'' to secondary ABSs under the amended rule.

[57] This commenter further noted that compliance costs of tracking ten percent obligors may cause funds to avoid any ABS whose issuer discloses the existence of ten percent obligors. Since a large number of ABSs may be structured such that all or a significant portion of ten percent obligors are restricted special purpose entities, allowing funds to disregard these ten percent obligors would further increase the supply of desirable ABSs for money market fund investment, avert the imposition of unnecessary constraints on the asset backed commercial paper market, and expose funds to little, if any, additional risks.

[58] Paragraph (c)(4)(ii)(D)(*2*) of rule 2a–7, as amended. The amended rule provides that a restricted special purpose entity may issue its securities to other persons that control, are controlled by or are under common control with, the restricted special purpose entity if such persons are not ABS issuers.

[59] Paragraph (c)(4)(ii)(D)(*3*) of rule 2a–7, as amended. If the fund is not relying on a demand feature or guarantee of a ten percent obligor for purposes of credit quality or maturity, or for liquidity, the fund may disregard the demand feature or guarantee for all purposes. See paragraph (c)(5) of rule 2a–7, as amended.

iii. Special Purpose Entity Cap. In the Proposing Release, the Commission explained that it was possible under the rule for a large portion of a fund to be exposed to a single ABS, as a result of a fund investing in a special purpose entity with one or more ten percent obligors.[60] The Commission noted that this could expose the fund to an undue amount of structural risk (*e.g.*, the risk that the special purpose entity might be affected by the bankruptcy of its sponsor), and requested comment whether the rule should restrict fund investment in the obligations of a single special purpose entity.

Although the three industry participants that responded to the request for comment urged adoption of such a cap, the Commission has decided not to amend the rule in this manner. The Commission is concerned that such a cap would add complexity to the rule without meaningfully limiting structural risks. While a cap would limit a fund's investment in a particular special purpose entity, it would not prevent a fund from investing large amounts of its assets in multiple identically-structured special purpose entities established by the same sponsor. A structural flaw in an ABS that exposes investors in one special purpose entity to the bankruptcy of the sponsor would likely affect all of the special purpose entities similarly structured. Therefore, the Commission is not persuaded that a cap would effectively contain a fund's exposure to structural risk, and in any event, rule 2a–7 looks to the ratings of the NRSROs to provide an independent review of ABS structures.[61] Fund advisers, however, should consider the fund's exposure to structural risk when evaluating whether an investment in a particular ABS is consistent with the fund's objective of maintaining a stable net asset value.

iv. Sponsor-Provided Demand Features and Guarantees. Rule 2a–7 provides that a fund may not invest, with respect to seventy-five percent of its total assets, more than ten percent of its total assets in securities issued by or subject to puts from the same institution (or under the amended rule's terminology, ''guarantee'' or ''demand feature'').[62] A fund is not subject to the ten percent limitation with respect to the remaining twenty-five percent of its total assets (''twenty-five percent basket'') if the securities held in the basket are first tier securities and the puts are issued by non-controlled persons.[63] As a result, a fund holding an ABS subject to a put from its sponsor is not able to include this investment in its twenty-five percent basket if the sponsor is in a control relationship with the special purpose entity.[64]

The twenty-five percent basket is restricted to securities subject to puts from non-controlled persons in order to minimize a fund's exposure to the credit risk of a single economic enterprise and limit the aggregate exposure to the risks of related, active businesses.[65] Permitting a fund to invest more than ten percent of its total assets in an ABS subject to a demand feature or guarantee issued by a sponsor, however, would not have this effect, because the special purpose entity, unlike an active enterprise, is a limited purpose vehicle created solely for the purpose of issuing fixed income securities based on the cash flow of the qualifying assets. Therefore, the Commission proposed to amend rule 2a–7 to allow funds to treat a demand feature or guarantee from an ABS sponsor as a demand feature or guarantee from a non-controlled person. Commenters supported the proposed amendment, which the Commission is adopting as proposed.[66]

v. First Loss Guarantees. Some ABSs are supported by a guarantee that covers all losses up to an amount of expected losses likely to be experienced by the ABS. Because a fund's exposure to such a ''first loss guarantee'' is similar to its exposure to a guarantee of the entire security,[67] the 1996 Amendments required a fund to treat a first loss guarantor as a guarantor of the entire ABS. Commenters urged that first loss guarantees be treated similar to other fractional guarantees under the rule and raised numerous questions about the application of the provision to certain ABS structures.

The Commission continues to believe that investment in an ABS subject to a first loss guarantee can potentially result in a fund being overexposed to the credit risk of the first loss guarantor. The number and nature of questions raised by the 1996 Amendments, however, have convinced the Commission that these risks are better managed by the fund's investment adviser. The Commission, therefore, is revising the rule to permit funds to treat a first loss guarantee as any other fractional guarantee when calculating compliance with the rule's guarantee and demand feature diversification standards.[68] Advisers should, however, carefully consider potential exposure to the credit risks of a first loss guarantor when evaluating whether investment in an ABS is consistent with the fund's objective of maintaining a stable net asset value.

c. Periodic Determinations Regarding Ten Percent Obligors. The 1996 Amendments required a fund to adopt written procedures requiring periodic determinations of the number of ten percent obligors deemed to be issuers of all or a portion of an ABS. The Commission is amending this requirement so that periodic determinations are not required with

[60] Proposing Release, *supra* note 6, at n.52 and accompanying text.

[61] NRSROs, prior to assigning a rating, not only analyze the quality of the assets underlying an ABS, but also conduct an independent analysis of the structural integrity of the ABS. *See* Release 19959, supra note 49, at nn.108–12 and accompanying text.

[62] Paragraph (c)(4)(iii) of rule 2a–7, as amended.

[63] *Id.* The amended rule refers to such instruments as guarantees or demand features from ''non-controlled persons.'' See paragraphs (a)(9) and (a)(16) of rule 2a–7, as amended. The Appendix to this Release illustrates the operation of the twenty-five percent basket under the amended rule when securities are subject to guarantees or demand features from multiple providers.

[64] This may occur, for example, if an ABS sponsor owns a residual equity interest in the special purpose entity. In this case, the ABS sponsor might ''control'' the special purpose entity within the meaning of section 2(a)(9) of the 1940 Act [15 U.S.C. 80a–2(a)(9)]. See Proposing Release, *supra note* 6, at n.54 and accompanying text. An ABS sponsor may not, however, be deemed to ''control'' the special purpose entity under other federal securities laws or for other purposes.

[65] Release 21837, *supra* note 2, at n.73 and accompanying text.

[66] Paragraphs (a)(9) (''demand feature issued by a non-controlled person'') and (a)(16) (''guarantee issued by a non-controlled person'') of rule 2a–7, as amended. Although a guarantee provided by a person in a control relationship with the issuer of the underlying security is excluded from the Rating Requirement for guarantees, the exclusion does not apply to a sponsor-provided guarantee of an ABS under the amended rule. Thus, sponsor-provided guarantees of ABSs must be rated. Paragraph (a)(10)(iii)(A) of rule 2a–7, as amended; see also *supra* Section I.B.1.c. of this Release.

[67] The failure of a first loss guarantor covering the first ten percent of all losses likely to be incurred by an ABS is likely to have a more significant effect on the value of the ABS than the failure of a fractional guarantor supporting only a portion of any losses incurred.

[68] Paragraph (c)(4)(iv)(A) of rule 2a–7, as amended. ABSs also may be subject to ''second loss guarantees'' that guarantee a specific amount of losses in excess of losses covered by a first loss guarantee. Funds should treat second loss guarantees of ABSs in the same manner as any other fractional guarantees or demand features under the amended rule. Sponsors of ABSs may provide additional credit risk protection by structuring an offering such that the value of qualifying assets in the pool exceeds the amount of the ABS offering. For example, a $1 billion ABSs offering might be collateralized by an asset pool of $1.1 billion. The $100 million of ''overcollateralization'' may be applied to cover any first losses incurred before drawing upon third party guarantees or other credit enhancements. Although overcollateralization would be relevant in determining whether the ABS presents minimal credit risks, this type of seller-provided credit enhancement does not fall within the rule's definition of a guarantee or demand feature and may be disregarded for purposes of the rule's diversification standards. *See* paragraphs (a)(8) (definition of ''demand feature'') and (a)(15) (definition of ''guarantee'') of rule 2a–7, as amended.

respect to any ABS that a fund's board of directors initially has determined will never have, or is unlikely to have, any ten percent obligors.[69] This determination may be based upon a structural analysis of the ABS or upon representations in the offering materials or governing documents of an ABS that it will never have ten percent obligors. Funds also must maintain a record of this determination.[70]

d. Swap Arrangements. The Proposing Release noted that certain ABSs may consist of qualifying assets whose cash flow has been ''swapped'' to a financial institution (the ''swap counterparty'') that ultimately acts as the primary source of payment to funds holding the ABSs (*i.e.,* a ''total return swap''). The Commission requested comment whether the swap counterparty in this instance should be treated as the issuer of the ABSs for diversification purposes and on the appropriate treatment of swaps and similar arrangements under the rule.

Commenters suggested various approaches to the treatment of swaps under the rule.[71] All acknowledged, however, the difficulty of addressing swaps and similar arrangements by rule due to the constantly evolving nature of swap transactions and the wide variations in the types of swaps used to structure ABSs offerings. The Commission has determined not to amend the rule at this time to specifically address the treatment of swaps or similar arrangements. Swaps and similar arrangements that fall within the rule's definition of a guarantee or demand feature, however, should be treated as such for purposes of guarantee and demand feature diversification.[72] A fund's adviser, however, should seek to ensure that investments by the fund in securities subject to swap arrangements are consistent with rule 2a–7's overriding policy of limiting funds to investments that are consistent with maintaining a stable net asset value and do not expose the fund excessively to credit risks posed by swap counterparties.

4. Other Amendments to Rule 2a–7

a. Investments in Other Money Market Funds. The 1996 Amendments permitted a fund (''acquiring fund'') to treat an investment in another money market fund (''acquired fund'') as a first tier security, but limited investment in any single money market fund to no more than five percent of fund assets. The 1996 Amendments created an exception, however, for a fund investing substantially all of its assets in shares of another money market fund in reliance on section 12(d)(1)(E) of the 1940 Act (*e.g.,* a master-feeder arrangement).[73] The 1996 Amendments deemed this type of a fund to be in compliance with rule 2a–7's diversification standards if the acquiring fund's board of directors reasonably believed that the acquired fund is in compliance with rule 2a–7.

Several commenters pointed out that, as a result of Commission exemptive orders [74] and amendments to the 1940 Act's limitations on ''funds of funds'' arrangements,[75] some money market funds may now invest more than five percent but less than substantially all of their assets in shares of another money market fund. The Commission is amending the rule to expand the exception to cover all investments by a fund in the shares of another money market fund in excess of the otherwise applicable issuer diversification standards.[76]

Under the amended rule, shares of money market funds are considered to be first tier securities,[77] and are thus subject to the rule's issuer diversification standards with respect to first tier securities.[78] A fund may, however, within the limitations of section 12(d)(1) of the 1940 Act, invest in shares of another money market fund in excess of the rule's issuer diversification standards, but only if the acquiring fund's board of directors reasonably believes that the acquired fund is in compliance with rule 2a–7.[79]

b. Definition of Eligible Security—Certain Unrated Securities. Under the 1996 Amendments, an unrated security that was a long-term security when issued, but had a remaining maturity of less than 397 calendar days when purchased by the fund, was an eligible security based on whether the security is comparable in quality to a rated security (*i.e.,* one with a short-term rating), unless the unrated security had received a long-term rating from any NRSRO that was not within the three highest categories of long-term ratings. The Commission is adopting a proposed amendment to the rule permitting a fund to treat such a security as an eligible security if that security has a long-term rating from the ''requisite NRSROs'' [80] within the three highest rating categories.[81]

c. Additional Amendments. The Commission proposed additional amendments designed to further clarify and make technical corrections to the rule. Commenters supported the amendments, and the Commission is adopting them as follows:

(i) Acquisition of Portfolio Securities. The Commission is adding the new defined term ''acquisition'' to make the rule more uniform in its application to

[69] Paragraph (c)(9)(iv) of rule 2a–7, as amended. The board of directors may delegate this determination, and most other determinations required by the rule, to the fund's adviser or to the officers of the fund. The board, however, may not delegate certain specific determinations required under rule 2a–7. See paragraph (e) of rule 2a–7, as amended.

[70] Paragraph (c)(10)(v) of rule 2a–7, as amended.

[71] Six commenters addressed this issue and generally suggested that a swap counterparty acting as the primary source of payment to a fund be treated as an issuer and subject to the issuer diversification standards. Most of these commenters suggested that counterparties in swaps that support or guarantee the obligations of an ABS issuer or other party to pay (but are not the sole source of payment on the ABS) be treated as guarantees subject to the guarantee and demand feature diversification standards.

[72] See paragraphs (a)(8), (a)(15), (c)(4)(iii) and (c)(4)(iv) of rule 2a–7, as amended.

[73] 15 USC 80a–12(d)(1)(E).

[74] See, *e.g.,* Daily Money Fund, *et al.,* Investment Company Act Release Nos. 22285 (Oct. 16, 1996) (Order) and 22236 (Sept. 20, 1996) (Notice).

[75] In 1996, the 1940 Act's restrictions on fund investments in other funds were relaxed by, among other things, adding new section 12(d)(1)(G) [15 USC 80a–12(d)(1)(G)] that excepts ''affiliated'' funds of funds from the restrictions of section 12(d)(1)(A) under certain conditions. See The National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[76] Paragraph (c)(4)(ii)(E) of rule 2a–7, as amended.

[77] Paragraph (a)(12) of rule 2a–7, as amended.

[78] See paragraph (c)(4)(i) of rule 2a–7, as amended.

[79] Paragraph (c)(4)(ii)(E) of rule 2a–7, as amended. A taxable or national fund could take advantage of the three day safe harbor of paragraph (c)(4)(i)(A) and a single state fund could use its ''twenty-five percent basket'' under paragraph (c)(4)(i)(B) to invest up to twenty-five percent of fund assets in the securities of a single money market fund without the board making a ''reasonable belief'' finding, even though, in both cases, the investment would be in excess of five percent of fund assets. Under the rule, an acquiring fund that holds securities of a particular issuer (''Issuer A''), and invests in shares of an acquired fund that also holds securities of Issuer A, would not aggregate those positions to determine its compliance with the rule's diversification standards with respect to Issuer A.

[80] Paragraph (a)(21) of rule 2a–7, as amended (definition of ''requisite NRSROs'').

[81] Paragraph (a)(10)(ii)(A) of rule 2a–7, as amended. For example, an unrated ''stub'' security may have long-term ratings from three NRSROs. One of these NRSROs may give the security a long-term rating in the NRSRO's fourth highest category, which would have precluded the fund from purchasing the security before the adoption of these amendments. Under the revised rule, however, the fund may look to the other ratings and treat the security as an eligible security if the two other NRSROs have given the security long-term ratings within one of their three highest long-term rating categories. If any NRSRO has given the security (or the issuer of the security with respect to a class of debt obligations that is comparable in priority and security) a short-term rating, however, the short-term rating would override the long-term ratings and reference to long-term ratings would be unnecessary to determine whether the security was an eligible security. Long-term ratings may be relevant, however, to an evaluation of whether the issuer presents minimal credit risks under paragraph (c)(3)(i) of rule 2a–7, as amended.

fund investments and to clarify that the failure of a fund to exercise a demand feature does not have similar consequences under the rule as a decision to ''rollover'' commercial paper.[82]

(ii) Single State Funds. The Commission is amending the definition of a ''single state fund'' to include a fund seeking to ''maximize'' the amount of income exempt from income taxes of a particular state.[83]

(iii) Standby Commitments. As proposed, the Commission has deleted the term ''standby commitment'' and all references to that term from the rule.[84]

(iv) Downgrades, Defaults, and Other Events. The Commission is amending the rule to require a fund's board of directors to reassess whether an unrated or second tier security continues to present minimal credit risks only when the fund's adviser (or other person delegated portfolio management responsibilities) becomes aware that the security has been downgraded by any NRSRO below that NRSRO's two highest short-term rating categories.[85]

(v) Recordkeeping Requirements. The Commission is adding rule text inadvertently omitted from the 1996 Amendments that requires the board of directors to document minimal credit risk determinations of portfolio securities.[86]

(vi) Holding Out. Using new rulemaking authority, the Commission is restating the rule's prohibition on a fund's use of names suggesting that it is a money market fund, unless it complies with rule 2a–7.[87]

II. Amendments to the Advertising Rules Applicable to Money Market Funds

The Commission is adopting amendments to the Commission's money market fund advertising rules and forms to clarify the formula used by money market funds to calculate yield and to reduce the potential for investors being misled or confused by the presentation of a money market fund's short-term total return.

A. Calculation of Yield

The Commission proposed to amend its money market fund yield formula to clarify that only investment income may be included in the yield of a money market fund. Three commenters supported the amendment; one opposed it and urged the Commission to specifically permit inclusion of non-investment income. The Commission is concerned that inclusion of non-investment income will distort yield and diminish the utility of money market fund yield to investors. The Commission, therefore, has decided to adopt the proposed amendment to the money market fund yield formula.[88]

B. Use of Total Return

The Proposing Release noted that some money market fund advertisements have used short-term total return instead of yield and expressed concern that many investors may not understand the difference.[89] The Commission proposed to amend its rules to require that total return quotations in advertisements and sales literature cover a period of at least one year, and that such quotations be accompanied by a quotation of current yield, computed in accordance with Commission rules and set forth with equal prominence.

All commenters that addressed this proposal objected to the proposed requirement that total return quotations cover at least one year. They argued that the proposal would preclude total return quotations during a fund's first year and in other circumstances in which the purpose of the advertisement was other than to circumvent the Commission's yield formula. The Commission has decided not to require all money market fund total return quotations to cover a period of one year. Instead, the Commission is revising its rules to require that (i) quotations of total return be accompanied by quotations of current yield and that both quotations be placed next to each other and shown in the same size print,[90] and (ii) if there is a material difference between the quoted total return and the quoted yield, a statement that the yield quotation more closely reflects the current earnings of the fund than the total return quotation.[91]

III. Effective Date/Compliance Date

A. Effective Date

The rule amendments adopted in this Release will become effective February 10, 1998. The Office of Management and Budget has determined that the technical amendments to rule 2a–7 are ''major rules'' and the amendments to the Commission's money market fund advertising rules and forms are ''minor rules'' under Chapter 8 of the Administrative Procedure Act,[92] which was added by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').[93] SBREFA requires all final agency rules to be submitted to Congress for review and requires generally that the effective date of a major rule be delayed for sixty days pending Congressional review. A major rule may become effective at the end of the sixty-day review period, unless Congress passes a joint resolution disapproving the rule.[94]

B. Compliance Dates

The Proposing Release requested comment whether the Commission should provide for a six-month

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[82] Paragraph (a)(1) of rule 2a–7, as amended.

[83] Paragraph (a)(23) of rule 2a–7, as amended. The effect of the amendment would be to permit this type of a fund to take advantage of the twenty-five percent basket in determining compliance with the rule's diversification standards, even if it did not primarily distribute income exempt from state income taxes. See paragraph (c)(4)(i)(B) of rule 2a–7, as amended; see also Proposing Release, *supra* note 6, at nn.66–68 and accompanying text.

[84] See Proposing Release, *supra* note 6, at nn.69–71 and accompanying text. Under the amended rule, a standby commitment that meets the definition of a demand feature must be treated as such. See paragraph (a)(8) of rule 2a–7, as amended (definition of ''demand feature''). A standby commitment that is not a demand feature is not subject to the rule's credit quality or diversification standards.

[85] Paragraph (c)(6)(i)(A)(2) of rule 2a–7, as amended; see Proposing Release, *supra* note 6, at n.72 and accompanying text.

[86] Paragraph (c)(10)(iii) of rule 2a–7, as amended; see Proposing Release, *supra* note 6, at nn.74–75 and accompanying text.

[87] Paragraph (b) of rule 2a–7, as amended. The National Securities Markets Improvement Act of 1996 [Pub. L. 104–290, 110 Stat. 3416 (1996)] amended Section 35(d) of the 1940 Act [15 USC 80a–34(d)] to make it unlawful to adopt as a fund name or title, or as a title of fund securities, words that the Commission finds are materially deceptive or misleading, and to authorize the Commission to define names and titles deemed to be ''materially deceptive and misleading.''

[88] *See* Item 22 of Form N–1A [17 CFR 239.15A and 274.11A], Item 25 of Form N–3 [17 CFR 239.17a and 274.11b], and Item 21 of Form N–4 [17 CFR 239.17b and 274.11c], as amended.

[89] Proposing Release, *supra* note 6, at n.81 and accompanying text. As a result, investors may assume incorrectly that a fund quoting the higher total return figure is a better performing fund than other money market funds quoting yield. For example, during a period of declining interest rates, the fund's total return will be higher than its current yield because it will include periods of time during which the fund held higher yielding securities. In addition, investors may incorrectly assume that the higher ''total return'' is the yield they can expect to receive upon an investment in the fund.

[90] Quotations of total return and current yield in an advertisement delivered electronically must be presented together and in a manner that presents each quotation with identical prominence in light of the particular electronic medium used to transmit the advertisement.

[91] *See* paragraph (d)(2) of rule 482 under the 1933 Act, as amended [17 CFR 230.482(d)(2)]; paragraph (b)(1)(ii)(C) of rule 34b–1 under the 1940 Act, as amended [17 CFR 270.34b–1(b)(1)(ii)(C)].

[92] 5 USC 801.

[93] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996). Under SBREFA, a rule is ''major'' if it 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. 5 USC 804(2).

[94] 5 USC 801(a)(3).

transition period for compliance.[95] Commenters supported a six-month period to give fund boards of directors sufficient time to review and approve fund procedures. Several commenters also suggested that the ''grandfathering'' of certain securities provided for by the release adopting the 1996 Amendments be extended,[96] whereas one commenter opposed such extension. The Commission has decided to delay the date for compliance with the amended rule for six months and to extend the ''grandfathering'' of fund investments in certain securities, as described below.

1. General Compliance Date

All money market funds must be in compliance with rule 2a–7, as amended, (and with conforming amendments reflecting the revisions to rule 2a–7) by July 1, 1998, except with respect to ''grandfathered securities'' as provided below.[97] Funds must comply with the amendments to the advertising rules and forms applicable to money market funds by February 10, 1998.

2. ''Grandfathered'' Securities

To minimize disruption to funds and markets as a result of the adoption of these amendments, the Commission is ''grandfathering'' certain securities first issued on or before February 10, 1998 that do not meet the following requirements of the amended rule:

(i) The Rating Requirement for guarantees;[98]

(ii) The Notification Requirement, which provides that, in order for a security subject to a guarantee or demand feature to be an eligible security, the fund must receive notice from the demand feature or guarantee provider (or another institution) if there is a substitution of the provider of the demand feature or guarantee;[99]

(iii) The requirements for ABSs regarding maturity determinations and ratings;[100]

(iv) The requirement that a demand feature and a guarantee include the ability to recover principal and any accrued interest;[101] and

(v) The requirement that a security subject to a conditional demand feature is an eligible security only if the fund's board of directors makes certain determinations regarding the conditional demand feature's exercisability.[102]

A fund may continue to hold these ''grandfathered'' securities or acquire these securities provided that they satisfy the other provisions of the rule, as amended, and are issued on or before February 10, 1998.

IV. Cost/Benefit Analysis and Effects on Competition, Efficiency and Capital Formation

A. Technical Amendments to Rule 2a–7

The technical amendments to rule 2a–7 make refinements and corrections to the 1996 Amendments. They are intended to permit money market funds the maximum amount of flexibility in selecting their investments consistent with the objective of maintaining a stable net asset value. This additional flexibility will promote market efficiency by allowing funds to invest in a wider variety of instruments that present risks consistent with that objective. For example, the technical amendments expand the investment opportunities of funds, without increasing risks, by allowing funds to substitute the credit quality of guarantee providers for the issuers of securities subject to guarantees (instead of only those subject to unconditional demand features) for purposes of compliance with the rule's credit quality standards. By resolving interpretive issues, the technical amendments also address competitive inequities that might arise among funds if, for example, funds draw different conclusions as to the permissibility of a particular investment that may increase fund yield.

As discussed above,[103] the 1996 Amendments tighten the risk-limiting conditions of rule 2a–7 applicable to tax exempt money market funds and clarify the rule's treatment of certain instruments, such as ABSs. The technical amendments potentially will benefit investors to the extent that rule 2a–7, as finally amended, operates to decrease the likelihood that a fund will not maintain a stable net asset value and provides investors greater opportunities to obtain higher yields without exposure to risks inconsistent with their investment expectations.

The costs of the technical amendments to funds and fund advisers (and ultimately fund shareholders) are likely to be minimal, since the amendments do not impose additional procedural requirements or reporting burdens on funds. The Commission believes that the direct or indirect benefits derived from the technical amendments cannot be quantified because it is impossible to predict with certainty how funds will structure their portfolio holdings in response to these amendments.[104] In addition, any costs or benefits are likely to affect not only funds, but also a wide variety of market participants.[105]

In the Proposing Release, the Commission requested specific comment on the costs and benefits associated with the proposals. No commenters provided specific estimates of any costs or benefits. One noted generally the increase in time and costs incurred to document compliance with rule 2a–7 since 1991, and suggested that procedural requirements focus less on periodic reviews of existing information and more on actions required by a board or fund managers in response to new information.[106] In response to these

[95] *See* Proposing Release, *supra* note 6, at nn.84–85 and accompanying text.

[96] The 1996 Amendments ''grandfathered'' fund investments in certain securities issued on or before June 3, 1996.

[97] Rule 2a–7 requires a fund to meet the rule's diversification standards with respect to a particular issuer on the date the fund acquires a security of that issuer. Paragraphs (c)(4)(i) and (ii) (with respect to issuer diversification) and (c)(4)(iii) and (iv) (with respect to diversification of demand features and guarantees) of rule 2a–7, as amended. A tax exempt fund holding a greater percentage of its total assets in the securities of an issuer than the applicable diversification standard permits as of July 1, 1998 may not purchase additional securities or ''roll over'' current holdings until the purchase or roll over of such securities will not cause the fund to exceed the applicable diversification standards immediately after the purchase or roll over. Funds are not required to exercise puts or otherwise dispose of portfolio holdings to meet the new diversification standards.

[98] Paragraph (a)(10)(iii)(A) of rule 2a–7, as amended.

[99] Paragraph (a)(10)(iii)(B) of rule 2a–7, as amended.

[100] Paragraphs (a)(8)(ii) (definition of demand feature for ABSs) and (a)(10)(ii)(B) (rating requirement for ABSs) of rule 2a–7, as amended. Funds are required, however, to apply the issuer diversification standards for ABSs in accordance with Section I.B.3.b. of this Release, *supra. See* paragraph (c)(4)(ii)(D) of rule 2a–7, as amended.

[101] Paragraphs (a)(8) and (a)(15) of rule 2a–7, as amended.

[102] Paragraph (c)(3)(iv)(B) of rule 2a–7, as amended.

[103] *See supra* Section I.A. of this Release.

[104] For example, many money market funds currently do not invest in ABSs, or invest only in those ABSs that do not raise the diversification issues addressed in this Release. The Commission expects that more funds will invest in ABSs, although there is no empirical basis for predicting the size of that expected effect.

[105] Many of the complex money market fund instruments affected by the technical amendments are specifically designed to comply with rule 2a–7. The primary effect of the amendments will be to change how those instruments are structured, rather than to prohibit funds from investing in currently-available money market instruments. Thus, to the extent the amendments impose costs or provide benefits, these costs and benefits may be shared by funds, investors, issuers, and the investment banks or other entities that structure money market instruments.

[106] The technical amendments do not require additional periodic reviews. The rule's procedural requirements, including periodic reviews of certain determinations, were adopted before the proposal of the technical amendments. The costs and benefits of these procedures were analyzed previously in

concerns, the technical amendments create exceptions to the rule's periodic review requirements when those requirements are not necessary to prevent the fund from inadvertently holding ineligible securities.[107]

Section 2(c) of the 1940 Act provides that whenever the Commission is engaged in rulemaking and is required to consider whether an action is necessary or appropriate in the public interest, the Commission also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[108] For the reasons stated in the cost/benefit analysis above, the Commission has concluded that the technical amendments will promote efficiency, competition and capital formation.

B. Amendments to Advertising Rules Applicable to Money Market Funds

The amendments to the Commission's advertising rules and forms applicable to money market funds are designed to clarify the formula used by money market funds to calculate yield and reduce the potential for investors being misled or confused by the presentation of a money market fund's short-term total return. They benefit funds and fund investors by clarifying the yield formula and codifying accepted practices under the current rules. The amendments are intended to preserve the consistency of advertised yield and to maintain the ability of investors to compare yields quoted by various funds.

The Commission anticipates that the costs of these amendments to funds and investors are likely to be minimal. No commenters responded to the Commission's request for specific estimates of costs or benefits associated with the proposed rule amendments. One commenter stated that the proposal to clarify that only investment income may be included in a fund's yield would benefit neither funds nor investors, because it would discourage funds from identifying sources of safe, non-investment income, encourage funds to increase yield through riskier investments, and deprive investors of information regarding consistent sources of non-investment income.[109] The Commission believes, however, that the rule will benefit investors by ensuring that a money market fund's yield is consistently advertised and represents only income that reflects the performance of the fund's investment portfolio.[110]

V. Paperwork Reduction Act

As set forth in the Proposing Release, certain provisions of the amendments adopted in this Release contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[111] The collection of information requirements contained in these amendments were submitted to the Office of Management and Budget (''OMB'') for review in accordance with section 3507(d) of the PRA. The title for the collection of information is ''Rules Regulating Money Market Funds.'' The collection of information requirements are in accordance with section 3507 of the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. OMB approved the PRA submission with respect to these amendments and assigned OMB control numbers with respect to the rules amended by this Release.[112]

Responses to the collection of information requirements for the rules and forms amended by this Release are mandatory. The collection of information requirements under rule 2a–7 are designed to enable the Commission staff to ascertain a money market funds' compliance with the rule and ensure that funds have in place procedures for collecting information necessary to make the required determinations regarding portfolio securities. Most responses required by rule 2a–7 and requested by or submitted to the Commission will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.[113] The collection of information required by rule 34b–1, rule 482, Form N–1A, Form N–3 and Form N–4, and which is disclosed in fund prospectuses, registration statements and advertisements, is public and is not kept confidential by the Commission.

The Supporting Statement to this Paperwork Reduction Act submission notes that, because the technical amendments to rule 2a–7 clarify existing reporting and recordkeeping obligations, it is estimated that they will have no effect on the annual reporting burden of money market funds. The amendments to the advertising rules and forms applicable to money market funds are estimated to impose no substantive additional paperwork burdens on funds. The Commission is aware of only one money market fund that has sought to include income other than investment income in its yield calculation, and very few money market funds that quote any type of total return in their advertisements. If total return is quoted, however, an insignificant additional burden is required only if the quoted yield differs materially from quoted total return, which the Commission believes occurs infrequently.

VI. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis (''IRFA'') regarding the proposed amendments, which was prepared in accordance with 5 U.S.C 603, was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C 604 regarding the adoption of technical amendments to rule 2a–7 and the adoption of amendments to the Commission's advertising rules applicable to money market funds.

The FRFA discusses the need for, and objectives of, the rule amendments. The FRFA explains that the technical amendments to rule 2a–7 address many of the questions and issues raised by industry participants after the adoption of the 1996 Amendments. The objective of the technical amendments is to refine

connection with the adoption of rule 2a–7 in 1983, and in connection with amendments to rule 2a–7 in 1986, 1991 and 1996.

[107] For example, the amended rule does not require periodic determinations of the number of ten percent obligors of an ABS that the board determines will never have, or is unlikely to have, ten percent obligors. *See* paragraphs (c)(9)(iv) and (c)(10)(v) of rule 2a–7, as amended.

[108] 15 USC 80a–2(c).

[109] According to this commenter, the inability to advertise non-investment income also would have an adverse effect on competition in the industry.

[110] The Commission believes that it is not relevant to consider the costs to funds identified by the commenter in connection with these amendments. The amendments are intended to clarify the existing money market fund yield formula, and as noted in the Proposing Release, the existing yield formula does not permit the inclusion of non-investment income in yield. *See* Proposing Release, *supra* note 6, at n.83 and accompanying text. In addition, the Commission believes that any such costs are in fact quite limited, since it is aware of only one fund that has sought to include non-investment income in its calculation of yield.

[111] 44 U.S.C 3501—3520.

[112] OMB control numbers are as follows: rule 2a–7 (3235–0268, expires Mar. 31, 2000); rule 34b–1 (3235–0346, expires Mar. 31, 2000); rule 482 (3235–0074, expires Mar, 31, 2000); Form N–1A (3235–0307, expires May 31, 2000); Form N–3 (3235–0316, expires Mar. 31, 2000); and Form N–4 (3235–0318, expires Apr. 30, 2000).

[113] If the board of directors takes action with respect to defaulted securities, events of insolvency or deviations in share price, however, funds must file an exhibit to Form N-SAR describing the action. This collection of information under rule 2a–7 is public and is not kept confidential by the Commission. See paragraph (c)(10)(vii) of rule 2a–7, as amended.

and correct the 1996 Amendments, and thereby permit money market funds the maximum amount of flexibility in selecting their investments consistent with the objective of maintaining a stable net asset value. The FRFA explains that the amendments to the advertising rules applicable to money market funds clarify that only investment income may be included in the yield of a money market fund and reduce the potential for investors being misled or confused by the presentation of a money market fund's short-term total return.

The FRFA estimates that out of the approximately 650 investment companies registered with the Commission that have one or more portfolios that are money market funds, a total of 130 would be considered small entities. The FRFA indicates that the technical amendments to rule 2a–7 and the amendments to the advertising rules and forms applicable to money market funds would effect small entities in the same manner as other funds subject to these rules.

The FRFA explains that neither the technical amendments to rule 2a–7 nor the amendments to the advertising rules applicable to money market funds impose any substantive additional reporting, recordkeeping or other compliance burdens. Finally, the FRFA states that in adopting the amendments the Commission considered (a) the establishment of differing compliance requirements that take into account the resources available to small entities; (b) simplification of the requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the rules for small entities. The FRFA states that the Commission concluded that different requirements for small entities with respect to either the technical amendments to rule 2a–7 or the amendments to the advertising rules applicable to money market funds are unnecessary and would be inconsistent with investor protection, and that the adopted amendments are not design standards.

Cost/benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the FRFA. A copy of the FRFA may be obtained by contacting David P. Mathews, Senior Counsel, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Statutory Authority

The Commission is amending rule 2a–7 and the advertising rules and forms applicable to money market funds under the exemptive and rulemaking authority set forth in sections 6(c) [15 USC 80a–6(c)], 8(b) [15 USC 80a–8(b)], 22(c) [15 USC 80a–22(c)], 34(b) [15 USC 80a–33(b)], 35(d) [15 USC 80a–34(d)] and 38(a) [15 USC 80a–37(a)] of the Investment Company Act of 1940. The authority citations for the amendments to the rules and forms precede the text of the amendments.

VIII. Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is amending chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 79*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by revising paragraph (d) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(d) In the case of a money market fund:

(1) Any quotation of the money market fund's yield in an advertisement shall be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17a and 274.11b of this chapter), or Form N–4 (§§ 239.17b and 274.11c of this chapter) and may include:

(i) A quotation of current yield that identifies the length of and the date of the last day in the base period used in computing that quotation; or

(ii) A quotation of effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to an identical base period and is presented with equal prominence.

(2) Accompany any quotation of the money market fund's total return in an advertisement with a quotation of the money market fund's current yield under paragraph (d)(1)(i) of this section. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The general authority citation for Part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(b), 80a–37, 80a–39 unless otherwise noted;

* * * * *

4. Section 270.2a–7 is revised to read as follows:

§ 270.2a–7 Money market funds.

(a) *Definitions.*

(1) *Acquisition* (or *Acquire*) means any purchase or subsequent rollover (but does not include the failure to exercise a Demand Feature).

(2) *Amortized Cost Method* of valuation means the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's Acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(3) *Asset Backed Security* means a fixed income security (other than a Government security) issued by a Special Purpose Entity (as defined in this paragraph), substantially all of the assets which consist of Qualifying Assets (as defined in this paragraph). *Special Purpose Entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from Qualifying Assets, but does not include a registered investment company. *Qualifying Assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business Day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized Fully* in the case of a repurchase agreement means that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the money market fund reasonably could

expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price (as defined in paragraph (a)(5)(v) of this section) provided in the agreement;

(ii) The money market fund or its custodian either has actual physical possession of the collateral or, in the case of a security registered on a book entry system, the book entry is maintained in the name of the money market fund or its custodian;

(iii) The collateral consists entirely of cash items, Government Securities or other securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the Requisite NRSROs; and

(iv) Upon an Event of Insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(v) *Resale Price* means the Acquisition price paid to the seller of the securities plus the accrued resale premium on such Acquisition price. The accrued resale premium shall be the amount specified in the repurchase agreement or the daily amortization of the difference between the Acquisition price and the resale price specified in the repurchase agreement.

(6) *Conditional Demand Feature* means a Demand Feature that is not an Unconditional Demand Feature. A Conditional Demand Feature is not a Guarantee.

(7) *Conduit Security* means a security issued by a Municipal Issuer (as defined in this paragraph) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a Municipal Issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal Issuer* means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A Conduit Security *does not* include a security that is:

(i) Fully and unconditionally guaranteed by a Municipal Issuer; or

(ii) Payable from the general revenues of the Municipal Issuer or other Municipal Issuers (other than those revenues derived from an agreement or arrangement with a person who is not a Municipal Issuer that provides for or secures repayment of the security issued by the Municipal Issuer); or

(iii) Related to a project owned and operated by a Municipal Issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a Municipal Issuer.

(8) *Demand Feature* means:

(i) A feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise. A Demand Feature must be exercisable either:

(A) At any time on no more than 30 calendar days' notice; or

(B) At specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or

(ii) A feature permitting the holder of an Asset Backed Security unconditionally to receive principal and interest within 397 calendar days of making demand.

(9) *Demand Feature Issued By A Non-Controlled Person* means a Demand Feature issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the Demand Feature (*control* means ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(10) *Eligible Security* means:

(i) A Rated Security with a remaining maturity of 397 calendar days or less that has received a rating from the Requisite NRSROs in one of the two highest short-term rating categories (within which there may be sub-categories or gradations indicating relative standing); or

(ii) An Unrated Security that is of comparable quality to a security meeting the requirements for a Rated Security in paragraph (a)(10)(i) of this section, as determined by the money market fund's board of directors; *Provided, however,* that:

(A) A security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an Unrated Security is not an Eligible Security if the security has received a long-term rating from any NRSRO that is not within the NRSRO's three highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing), unless the security has received a long-term rating from the Requisite NRSROs in one of the three highest rating categories;

(B) An Asset Backed Security (other than an Asset Backed Security substantially all of whose Qualifying Assets consist of obligations of one or more Municipal Issuers, as that term is defined in paragraph (a)(7) of this section) shall not be an Eligible Security unless it has received a rating from an NRSRO.

(iii) In addition, in the case of a security that is subject to a Demand Feature or Guarantee:

(A) The Guarantee has received a rating from an NRSRO or the Guarantee is issued by a guarantor that has received a rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security to the Guarantee, *unless*:

(*1*) The Guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the Guarantee (other than a sponsor of a Special Purpose Entity with respect to an Asset Backed Security);

(*2*) The security subject to the Guarantee is a repurchase agreement that is Collateralized Fully; or

(*3*) The Guarantee is itself a Government Security; and

(B) The issuer of the Demand Feature or Guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the Demand Feature or Guarantee is substituted with another Demand Feature or Guarantee (if such substitution is permissible under the terms of the Demand Feature or Guarantee).

(11) *Event of Insolvency* means, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(12) *First Tier Security* means any Eligible Security that:

(i) Is a Rated Security that has received a short-term rating from the Requisite NRSROs in the highest short-term rating category for debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) Is an Unrated Security that is of comparable quality to a security meeting the requirements for a Rated Security in paragraph (a)(12)(i) of this section, as determined by the fund's board of directors; or

(iii) Is a security issued by a registered investment company that is a money market fund; or

(iv) Is a Government Security.

(13) *Floating Rate Security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(14) *Government Security* means any ''Government security'' as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(15) *Guarantee* means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the Guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an Unconditional Demand Feature, an obligation that entitles the holder to receive upon exercise the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A Guarantee includes a letter of credit, financial guaranty (bond) insurance, and an Unconditional Demand Feature (other than an Unconditional Demand Feature provided by the issuer of the security).

(16) *Guarantee Issued By A Non-Controlled Person* means a Guarantee issued by:

(i) A person that, directly or indirectly, does *not* control, and is not controlled by or under common control with the issuer of the security subject to the Guarantee (*control* means ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(17) *NRSRO* means any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of § 240.15c3–1 of this Chapter, that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security.

(18) *Penny-Rounding Method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(19) *Rated Security* means a security that meets the requirements of paragraphs (a)(19)(i) or (ii) of this section, in each case subject to paragraph (a)(19)(iii) of this section:

(i) The security has received a short-term rating from an NRSRO, or has been issued by an issuer that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security; or

(ii) The security is subject to a Guarantee that has received a short-term rating from an NRSRO, or a Guarantee issued by a guarantor that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the Guarantee; but

(iii) A security is not a Rated Security if it is subject to an external credit support agreement (including an arrangement by which the security has become a Refunded Security) that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement as provided in paragraph (a)(19)(i) of this section, or the credit support agreement with respect to the security has received a short-term rating as provided in paragraph (a)(19)(ii) of this section.

(20) *Refunded Security* means a debt security the principal and interest payments of which are to be paid by Government Securities (''deposited securities'') that have been irrevocably placed in an escrow account pursuant to agreement between the issuer of the debt security and an escrow agent that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities shall not be redeemable prior to their final maturity;

(ii) The escrow agreement shall prohibit the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant shall have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities; *Provided, however*, an independent public accountant need not have provided the certification described in this paragraph (a)(20)(iii) if the security, as a Refunded Security, has received a rating from an NRSRO in the highest category for debt obligations (within which there may be sub-categories or gradations including relative standing).

(21) *Requisite NRSROs* means:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that NRSRO.

(22) *Second Tier Security* means any Eligible Security that is not a First Tier Security. *Second Tier Conduit Security* means any Conduit Security that is an Eligible Security that is not a First Tier Security.

(23) *Single State Fund* means a Tax Exempt Fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(24) *Tax Exempt Fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(25) *Total Assets* means, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, the total market-based value of its assets.

(26) *Unconditional Demand Feature* means a Demand Feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(27) *United States Dollar-Denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(28) *Unrated Security* means a security that is not a Rated Security.

(29) *Variable Rate Security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(b) *Holding Out and Use of Names and Titles.* (1) It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3) and (c)(4) of this section.

(2) It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a–34(d)) for a registered investment company to adopt the term ''money market'' as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(3) For purposes of this paragraph, a name that suggests that a registered investment company is a money market fund or the equivalent thereof shall include one that uses such terms as ''cash,'' ''liquid,'' ''money,'' ''ready assets'' or similar terms.

(c) *Share Price Calculations.* The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company (''money market fund'' or ''fund''), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1 thereunder, may be computed by use of the Amortized Cost Method or the Penny-Rounding Method; *Provided, however,* that:

(1) *Board Findings.* The board of directors of the money market fund shall determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the Amortized Cost Method or the Penny-Rounding Method, and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the market-based net asset value per share.

(2) *Portfolio Maturity.* The money market fund shall maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share or price per share; *Provided, however,* that the money market fund will not:

(i) Except as provided in paragraph (c)(2)(ii) of this section, Acquire any instrument with a remaining maturity of greater than 397 calendar days; or

(ii) In the case of a money market fund not using the Amortized Cost Method, Acquire a Government Security with a remaining maturity of greater than 762 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds ninety days.

(3) *Portfolio Quality*—(i) *General.* The money market fund shall limit its portfolio investments to those United States Dollar-Denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by an NRSRO) and that are at the time of Acquisition Eligible Securities.

(ii) *Second Tier Securities.* Immediately after the Acquisition of any Second Tier Security:

(A) *Taxable Funds.* A money market fund that is not a Tax Exempt Fund shall not have invested more than five percent of its Total Assets in securities that are Second Tier Securities; and

(B) *Tax Exempt Funds.* A money market fund that is a Tax Exempt Fund shall not have invested more than five percent of its Total Assets in Conduit Securities that are Second Tier Conduit Securities.

(iii) *Securities Subject to Guarantees.* A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be.

(iv) *Securities Subject to Conditional Demand Features.* A security that is subject to a Conditional Demand Feature (''Underlying Security'') may be determined to be an Eligible Security or a First Tier Security only if:

(A) The Conditional Demand Feature is an Eligible Security or First Tier Security, as the case may be;

(B) At the time of the Acquisition of the Underlying Security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the Conditional Demand Feature not being exercisable will occur; and

(*1*) The conditions limiting exercise either can be monitored readily by the fund, or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(*2*) The terms of the Conditional Demand Feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the Demand Feature in accordance with its terms; and

(C) The Underlying Security or any Guarantee of such security (or the debt securities of the issuer of the Underlying Security or Guarantee that are comparable in priority and security with the Underlying Security or Guarantee) has received either a short-term rating or a long-term rating, as the case may be, from the Requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the Requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories, as the case may be.

(4) *Portfolio Diversification*—(i) *Issuer Diversification.* The money market fund shall be diversified with respect to issuers of securities Acquired by the fund as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section, other than

with respect to Government Securities and securities subject to a Guarantee Issued By A Non-Controlled Person.

(A) *Taxable and National Funds.* Immediately after the Acquisition of any security, a money market fund other than a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however,* that such a fund may invest up to twenty-five percent of its Total Assets in the First Tier Securities of a single issuer for a period of up to three Business Days after the Acquisition thereof; *Provided, further,* that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph at any time.

(B) *Single State Funds.* With respect to seventy-five percent of its Total Assets, immediately after the Acquisition of any security, a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however,* that a Single State Fund shall not invest more than five percent of its Total Assets in securities issued by the issuer of the security unless the securities are First Tier Securities.

(C) *Second Tier Securities*—(*1*) *Taxable Funds.* Immediately after the Acquisition of any Second Tier Security, a money market fund that is not a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer that are Second Tier Securities.

(*2*) *Tax Exempt Funds.* Immediately after the Acquisition of any Second Tier Conduit Security, a money market fund that is a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer that are Second Tier Conduit Securities.

(ii) *Issuer Diversification Calculations.* For purposes of making calculations under paragraph (c)(4)(i) of this section:

(A) *Repurchase Agreements.* The Acquisition of a repurchase agreement may be deemed to be an Acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully.

(B) *Refunded Securities.* The Acquisition of a Refunded Security shall be deemed to be an Acquisition of the escrowed Government Securities.

(C) *Conduit Securities.* A Conduit Security shall be deemed to be issued by the person (other than the Municipal Issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset Backed Securities*—(*1*) *General.* An Asset Backed Security Acquired by a fund (''Primary ABS'') shall be deemed to be issued by the Special Purpose Entity that issued the Asset Backed Security, *Provided, however*:

(*i*) *Holdings of Primary ABS.* Any person whose obligations constitute ten percent or more of the principal amount of the Qualifying Assets of the Primary ABS (''Ten Percent Obligor'') shall be deemed to be an issuer of the portion of the Primary ABS such obligations represent; and

(*ii*) *Holdings of Secondary ABS.* If a Ten Percent Obligor of a Primary ABS is itself a Special Purpose Entity issuing Asset Backed Securities (''Secondary ABS''), any Ten Percent Obligor of such Secondary ABS also shall be deemed to be an issuer of the portion of the Primary ABS that such Ten Percent Obligor represents.

(*2*) *Restricted Special Purpose Entities.* A Ten Percent Obligor with respect to a Primary or Secondary ABS shall not be deemed to have issued any portion of the assets of a Primary ABS as provided in paragraph (c)(4)(ii)(D)(*1*) of this section if that Ten Percent Obligor is itself a Special Purpose Entity issuing Asset Backed Securities (''Restricted Special Purpose Entity''), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the Restricted Special Purpose Entity and which is not itself a Special Purpose Entity issuing Asset Backed Securities) are held by only one other Special Purpose Entity.

(*3*) *Demand Features and Guarantees.* In the case of a Ten Percent Obligor deemed to be an issuer, the fund shall satisfy the diversification requirements of paragraph (c)(4)(iii) of this section with respect to any Demand Feature or Guarantee to which the Ten Percent Obligor's obligations are subject.

(E) *Shares of Other Money Market Funds.* A money market fund that Acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (c)(4)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the Acquiring money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(iii) *Diversification Rules for Demand Features and Guarantees.* The money market fund shall be diversified with respect to Demand Features and Guarantees Acquired by the fund as provided in paragraphs (c)(4)(iii) and (c)(4)(iv) of this section, *other than* with respect to a Demand Feature issued by the same institution that issued the underlying security, or with respect to a Guarantee or Demand Feature that is itself a Government Security.

(A) *General.* Immediately after the Acquisition of any Demand Feature or Guarantee or security subject to a Demand Feature or Guarantee, a money market fund, with respect to seventy-five percent of its Total Assets, shall not have invested more than ten percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, subject to paragraphs (c)(4)(iii) (B) and (C) of this section.

(B) *Second Tier Demand Features or Guarantees.* Immediately after the Acquisition of any Demand Feature or Guarantee (or a security after giving effect to the Demand Feature or Guarantee) that is a Second Tier Security, a money market fund shall not have invested more than five percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee.

(C) *Demand Features or Guarantees Issued by Non-Controlled Persons.* Immediately after the Acquisition of any security subject to a Demand Feature or Guarantee, a money market fund shall not have invested more than ten percent of its Total Assets in securities issued by, or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, unless, with respect to any security subject to Demand Features or Guarantees from that institution (other than securities issued by such institution), the Demand Feature or Guarantee is a Demand Feature or Guarantee Issued By A Non-Controlled Person.

(iv) *Demand Feature and Guarantee Diversification Calculations*—(A) *Fractional Demand Features or Guarantees.* In the case of a security subject to a Demand Feature or Guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered Demand Features or Guarantees.* In the case of a security subject to Demand Features or Guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (c)(4)(iv)(A) of this section, each

institution shall be deemed to have provided the Demand Feature or Guarantee with respect to the entire principal amount of the security.

(v) *Diversification Safe Harbor.* A money market fund that satisfies the applicable diversification requirements of paragraphs (c)(4) and (c)(5) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(5) *Demand Features and Guarantees Not Relied Upon.* If the fund's board of directors has determined that the fund is not relying on a Demand Feature or Guarantee to determine the quality (pursuant to paragraph (c)(3) of this section), or maturity (pursuant to paragraph (d) of this section), or liquidity of a portfolio security, and maintains a record of this determination (pursuant to paragraphs (c)(9)(ii) and (c)(10)(vi) of this section), then the fund may disregard such Demand Feature or Guarantee for all purposes of this section.

(6) *Downgrades, Defaults and Other Events*—(i) *Downgrades*—(A) *General.* Upon the occurrence of either of the events specified in paragraphs (c)(6)(i)(A) (*1*) and (*2*) of this section with respect to a portfolio security, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders:

(*1*) A portfolio security of a money market fund ceases to be a First Tier Security (either because it no longer has the highest rating from the Requisite NRSROs or, in the case of an Unrated Security, the board of directors of the money market fund determines that it is no longer of comparable quality to a First Tier Security); and

(*2*) The money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any Unrated Security or Second Tier Security held by the money market fund has, since the security was Acquired by the fund, been given a rating by any NRSRO below the NRSRO's second highest short-term rating category.

(B) *Securities to Be Disposed Of.* The reassessments required by paragraph (c)(6)(i)(A) of this section shall not be required if, in accordance with the procedures adopted by the board of directors, the security is disposed of (or matures) within five Business Days of the specified event and, in the case of events specified in paragraph (c)(6)(i)(A)(*2*) of this section, the board is subsequently notified of the adviser's actions.

(C) *Special Rule for Certain Securities Subject to Demand Features.* In the event that after giving effect to a rating downgrade, more than five percent of the fund's Total Assets are invested in securities issued by or subject to Demand Features from a single institution that are Second Tier Securities, the fund shall reduce its investment in securities issued by or subject to Demand Features from that institution to no more than five percent of its Total Assets by exercising the Demand Features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

(ii) *Defaults and Other Events.* Upon the occurrence of any of the events specified in paragraphs (c)(6)(ii)(A) through (D) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any Demand Feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(A) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(B) A portfolio security ceases to be an Eligible Security;

(C) A portfolio security has been determined to no longer present minimal credit risks; or

(D) An Event of Insolvency occurs with respect to the issuer of a portfolio security or the provider of any Demand Feature or Guarantee.

(iii) *Notice to the Commission.* In the event of a default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) or an Event of Insolvency with respect to the issuer of the security or any Demand Feature or Guarantee to which it is subject, where immediately before default the securities (or the securities subject to the Demand Feature or Guarantee) accounted for ½ of 1 percent or more of a money market fund's Total Assets, the money market fund shall promptly notify the Commission of such fact and the actions the money market fund intends to take in response to such situation. Notification under this paragraph shall be made telephonically, or by means of a facsimile transmission or electronic mail, followed by letter sent by first class mail, directed to the attention of the Director of the Division of Investment Management.

(iv) *Defaults for Purposes of Paragraphs (c)(6) (ii) and (iii).* For purposes of paragraphs (c)(6) (ii) and (iii) of this section, an instrument subject to a Demand Feature or Guarantee shall not be deemed to be in default (and an Event of Insolvency with respect to the security shall not be deemed to have occurred) if:

(A) In the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; or

(B) The provider of the Guarantee is continuing, without protest, to make payments as due on the instrument.

(7) *Required Procedures: Amortized Cost Method.* In the case of a money market fund using the Amortized Cost Method:

(i) *General.* In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(ii) *Specific Procedures.* Included within the procedures adopted by the board of directors shall be the following:

(A) *Shadow Pricing.* Written procedures shall provide:

(*1*) That the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions;

(*2*) For the periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and

(3) For the maintenance of records of the determination of deviation and the board's review thereof.

(B) *Prompt Consideration of Deviation.* In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, the board of directors shall promptly consider what action, if any, should be initiated by the board of directors.

(C) *Material Dilution or Unfair Results.* Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(8) *Required Procedures: Penny-Rounding Method.* In the case of a money market fund using the Penny-Rounding Method, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(9) *Specific Procedures: Amortized Cost and Penny-Rounding Methods.* Included within the procedures adopted by the board of directors for money market funds using either the Amortized Cost or Penny-Rounding Methods shall be the following:

(i) *Securities for Which Maturity is Determined by Reference to Demand Features.* In the case of a security for which maturity is determined by reference to a Demand Feature, written procedures shall require ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the Demand Feature and, in the case of a security subject to a Conditional Demand Feature, the issuer of the security whose financial condition must be monitored under paragraph (c)(3)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(ii) *Securities Subject to Demand Features or Guarantees.* In the case of a security subject to one or more Demand Features or Guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (c)(3) of this section), maturity (pursuant to paragraph (d) of this section) or liquidity of the security subject to the Demand Feature or Guarantee, written procedures shall require periodic evaluation of such determination.

(iii) *Adjustable Rate Securities Without Demand Features.* In the case of a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(iv) *Asset Backed Securities.* In the case of an Asset Backed Security, written procedures shall require the fund to periodically determine the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section; *Provided, however,* written procedures need not require periodic determinations with respect to any Asset Backed Security that a fund's board of directors has determined, at the time of Acquisition, will not have, or is unlikely to have, Ten Percent Obligors that are deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section, and maintains a record of this determination.

(10) *Record Keeping and Reporting*—(i) *Written Procedures.* For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (c)(6) through (c)(9) and (e) of this section shall be maintained and preserved.

(ii) *Board Considerations and Actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record shall be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(iii) *Credit Risk Analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the NRSRO ratings (if any) used to determine the status of the security as an Eligible Security, First Tier Security or Second Tier Security shall be maintained and preserved in an easily accessible place.

(iv) *Determinations With Respect to Adjustable Rate Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determination required by paragraph (c)(9)(iii) of this section (that a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(v) *Determinations with Respect to Asset Backed Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (c)(9)(iv) of this section (the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section). The written record shall include:

(A) The identities of the Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section), the percentage of the Qualifying Assets constituted by the securities of each Ten Percent Obligor and the percentage of the fund's Total Assets that are invested in securities of each Ten Percent Obligor; and

(B) Any determination that an Asset Backed Security will not have, or is unlikely to have, Ten Percent Obligors deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section.

(vi) *Evaluations with Respect to Securities Subject to Demand Features or Guarantees.* For a period of not less

than three years from the date when the evaluation was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (c)(9)(ii) (regarding securities subject to one or more Demand Features or Guarantees) of this section.

(vii) *Inspection of Records.* The documents preserved pursuant to this paragraph (c)(10) shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)). If any action was taken under paragraphs (c)(6)(ii) (with respect to defaulted securities and events of insolvency) or (c)(7)(ii) (with respect to a deviation from the fund's share price of more than 1/2 of 1 percent) of this section, the money market fund will file an exhibit to the Form N–SAR (17 CFR 274.101) filed for the period in which the action was taken describing with specificity the nature and circumstances of such action. The money market fund will report in an exhibit to such Form any securities it holds on the final day of the reporting period that are not Eligible Securities.

(d) *Maturity of Portfolio Securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (d)(1) through (d)(8) of this section:

(1) *Adjustable Rate Government Securities.* A Government Security that is a Variable Rate Security where the variable rate of interest is readjusted no less frequently than every 762 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A Government Security that is a Floating Rate Security shall be deemed to have a remaining maturity of one day.

(2) *Short-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day.

(5) *Long-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase Agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio Lending Agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money Market Fund Securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the Acquired money market fund is required to make payment upon redemption, unless the Acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(e) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by paragraphs (c)(1) (board findings); (c)(6)(i)(C) (rule for certain securities subject to second tier Demand Features); (c)(6)(ii) (defaults and other events); (c)(7)(i) (general required procedures: Amortized Cost Method); (c)(7)(ii)(A) (shadow pricing), (B) (prompt consideration of deviation), and (C) (material dilution or unfair results); and (c)(8) (required procedures: Penny Rounding Method) of this section) provided:

(1) *Written Guidelines.* The Board shall establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (c)(3) of this section) and procedures under which the delegate makes such determinations:

(2) *Oversight.* The Board shall take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or Event of Insolvency with respect to the issuer of the security or any Guarantee to which it is subject that requires notification of the Commission under paragraph (c)(6)(iii) of this section) to assure that the guidelines and procedures are being followed.

5. Section 270.2a41–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment means a right to sell a specified underlying security or securities within a specified period of time and at an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise, that may be sold, transferred or assigned only with the underlying security or securities. A standby commitment entitles the holder to receive same day settlement, and will be considered to be from the party to whom the investment company will look for payment of the exercise price. A standby commitment may be assigned a fair value of zero, Provided, That:

* * * * *

6. Section 270.12d3–1 is amended by revising paragraph (d)(7)(v) to read as follows:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(7) * * *

(v) Acquisition of Demand Features or Guarantees, as these terms are defined in §§ 270.2a–7(a)(8) and 270.2a–7(a)(15) respectively, provided that, immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution. For the purposes of this section, a Demand Feature or Guarantee will be considered to be from the party to whom the company will look for payment of the exercise price.

* * * * *

7. Section 270.17a–9 is amended by revising the cite to ''paragraph (a)(9)'' in the introductory paragraph to read ''paragraph (a)(10)''.

8. Section 270.31a–1 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

§ 270.31a–1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(b) * * *

(1) * * * In the case of a money market fund, also identify the provider of any Demand Feature or Guarantee (as defined in § 270.2a–7(a)(8) or § 270.2a–7(a)(15) respectively) and give a brief description of the nature of the Demand Feature or Guarantee (*e.g.*, unconditional demand feature, conditional demand feature, letter of credit, or bond insurance) and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

* * * * *

9. Section 270.34b–1 is amended by revising paragraph (b) (the Note remains unchanged) to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) Except as provided in paragraph (b)(3) of this section:

(i) In any sales literature that contains performance data for an investment company, include the disclosure required by paragraph (a)(6) of § 230.482 of this chapter.

(ii) In any sales literature for a money market fund:

(A) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the money market fund with a quotation of current yield specified by paragraph (d)(1)(i) of § 230.482 of this chapter;

(B) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the money market fund with a quotation of current yield specified in paragraph (d)(1)(i) of § 230.482 of this chapter; and

(C) Accompany any quotation of the money market fund's total return with a quotation of the money market fund's current yield specified in paragraph (d)(1)(i) of § 230.482 of this chapter. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(iii) In any sales literature for an investment company other than a money market fund that contains performance data:

(A) Include the total return information required by paragraph (e)(3) of § 230.482 of this chapter;

(B) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the company with a quotation of current yield specified by paragraph (e)(1) of § 230.482 of this chapter; and

(C) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company with a quotation of tax equivalent yield specified in paragraph (e)(2) and current yield specified by paragraph (e)(1) of § 230.482 of this chapter.

(2) Any performance data included in sales literature under paragraphs (b)(1)(ii) or (iii) of this section must meet the currentness requirements of paragraph (f) of § 230.482 of this chapter.

(3) The requirements specified in paragraph (b)(1) of this section shall not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act (15 U.S.C. 80a–29), containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor shall the requirements of paragraphs (e)(3)(ii) and (f) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

11. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

12. Part B, Item 22(a) of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase ''and income other than investment income'' after the phrase ''exclusive of capital changes'' in each paragraph.

(b) Adding at the end of Instruction 2 the following: ''Exclude income other than investment income.''

Note: Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

13. Item 25(a) of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase ''and income other than investment income'' after the phrase ''exclusive of capital changes'' in each paragraph.

(b) Adding at the end of Instruction 3 the following: ''Exclude income other than investment income.''

Note: Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

14. Guide 38 to Form N–3 (Money Market Fund Investments in Other Money Market Funds) (referenced in §§ 239.17a and 274.11b) is amended by revising the last sentence to read as follows:

* * * Paragraph (c)(4)(ii)(E) of rule 2a–7 describes the obligations of a fund that invests its assets in another money market fund.

Note: Guide 38 to Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

15. Part B, Item 21(a) of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase ''and income other than investment income'' after the phrase ''exclusive of capital changes'' in each paragraph.

(b) Adding at the end of Instruction 3 the following: ''Exclude income other than investment income.''

Note: Form N–4 does not and the amendments will not appear in the Code of Federal Regulations.

By the Commission.

Dated: December 2, 1997.

Margaret H. McFarland,

Deputy Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

APPENDIX

Illustration: Guarantee and Demand Feature Diversification Calculations For Securities Subject to Multiple Demand Features and Guarantees[1]

With respect to securities subject to multiple demand features or guarantees upon which a fund is relying, a fund must first analyze each credit enhancement provider individually to determine whether securities issued by or subject to demand features or guarantees from the same provider exceed ten percent of total assets. If so, then those securities are placed in the twenty-five percent basket. Once placed in the basket, however, the value of each security is counted only once for purposes of calculating the amount of the twenty-five percent basket available for additional investments.

FACTS: A fund invests 9% of its total assets in Security A, which is guaranteed by a letter of credit ("LOC") issued by ABC Bank and subject to a conditional demand feature issued by XYZ Bank. The fund invests 5% of its total assets in Security B, which is guaranteed by a LOC issued by ABC Bank. The fund invests 5% of its total assets in Security C, which is subject to a conditional demand feature issued by XYZ Bank. Assume that the fund holds no other securities subject to guarantees or demand features provided by ABC Bank or XYZ Bank and that no other entity has guaranteed, or issued conditional demand features with respect to, over 10% percent of the fund's assets.

ANALYSIS: For purposes of the demand feature and guarantee diversification standards:

- 14% percent of the fund's total assets (Securities A and B) are subject to guarantees or demand features from ABC Bank. 14% of the fund's total assets (Securities A and C) are subject to guarantees or demand features from XYZ Bank.

- The fund must include Securities A, B and C in its twenty-five percent basket. The amount of investments in the twenty-five percent basket is calculated to be 19% of the fund's total assets (9% + 5% + 5%). This represents the aggregate value of all of the fund's securities subject to guarantees and demand features issued by ABC Bank and XYZ Bank.

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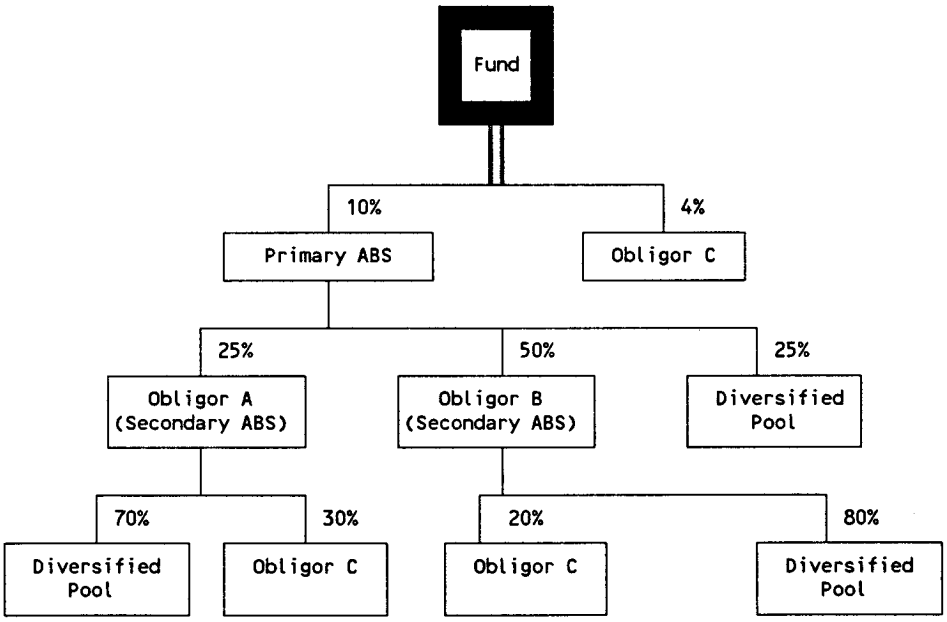
[1] See Section I.B.3.b.iv. of the Release (discussing the twenty five percent basket with respect to the demand feature and guarantee diversification standards).

Illustration: "Look-Through" to Secondary ABSs Under the Rule's ABS Issuer Diversification Standards[2]

Any ten percent obligor of a primary or secondary ABS is deemed to have issued a portion of the assets of the primary ABS that such ten percent obligor represents. To prevent double counting, obligations of each ten percent obligor are netted against the obligations of the special purpose entity ("SPE") for which it is a ten percent obligor. All netted obligations issued by the same direct or indirect ten percent obligor are aggregated when calculating a fund's total investment in any particular security.

FACTS

A fund invests 10% of its assets directly in an ABS ("Primary ABS") issued by an SPE. The fund also invests 4% of its assets directly in securities issued by Obligor C. Obligor C is not an SPE issuing ABSs. 25% of the Primary ABS's qualifying assets is invested in Obligor A and 50% of the Primary ABS's qualifying assets is invested in Obligor B. Obligor A is an SPE with 30% of its qualifying assets invested in securities issued by Obligor C. Obligor B is an SPE with 20% of its qualifying assets invested in securities issued by Obligor C.[3]



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2 See Section I.B.3.b.i. of the Release.

3 Reference to "Diversified Pool" in this illustration means that no other obligor's obligations constitute 10% or more of the pool of qualifying assets of the special purpose entity issuing ABSs.

ANALYSIS

For issuer diversification purposes, the fund has invested as follows:

- 1.75% of fund assets in Obligor A ([25% x 10%] - [30% x 25% x 10%]). The portion indirectly invested in Obligor C through Obligor A (.75%) is netted against the portion indirectly invested in Obligor A (2.5%).

- 4% of fund assets in Obligor B ([50% x 10%] - [20% x 50% x 10%]). The portion indirectly invested in Obligor C through Obligor B (1%) is netted against the portion indirectly invested in Obligor B (5%).

- 5.75% of fund assets in Obligor C ([[30% x 25% x 10%] + [20% x 50% x 10%]] + 4%). The portion indirectly invested in Obligor C (1.75%) (i.e., .75% through Obligor A + 1% through Obligor B) is added to the amount directly invested in Obligor C (4%).[4] In this example, the fund's investment in Obligor C would exceed the 5% limit on investments in securities of a single issuer.[5]

- 2.5% of fund assets in the Primary ABS (10% - [1.75% + 4% + 1.75%]). The portion deemed indirectly invested in Obligors A, B and C through the Primary ABS is netted against the amount directly invested in the Primary ABS.

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[4] If Obligors A or B (i.e., secondary ABSs) had, in addition to Obligor C, another ten percent obligor that was an SPE issuing ABSs (i.e., a "tertiary ABS"), the amended rule would not require the fund to "look through" to the qualifying assets of any ten percent obligors of such "tertiary ABS" for purposes of compliance with the issuer diversification standards.

[5] See paragraph (c)(4)(i)(A) of rule 2a-7, as amended.

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BILLING CODE 8010–01–C

federal register

Tuesday
December 9, 1997

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service Higher Education Challenge Grants Program for Fiscal Year 1998; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service Higher Education Challenge Grants Program for Fiscal Year 1998; Solicitation of Applications

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the Higher Education Challenge Grants Program for Fiscal Year (FY) 1998. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of Challenge Grant awards.

DATES: Proposals must be received by February 23, 1998. Forms indicating intent to submit a proposal are due January 22, 1998.

FOR FURTHER INFORMATION CONTACT: Howard E. Sandberg, Ph.D., Higher Education Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2251; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2251; telephone: (202) 720–1973; e-mail: hsandberg@reeusda.gov.

SUPPLEMENTARY INFORMATION: This Program is subject to the provisions found at 7 CFR Part 3405, 62 FR 39316, July 22, 1997. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.217, Higher Education Challenge Grants Program.

Authority

The authority for this program is contained in section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(1)). Under this authority, subject to the availability of funds, the Secretary of Agriculture, who has delegated the authority to the Administrator of CSREES, may make competitive grants, for a period not to exceed 5 years, to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct programs to respond to identified State, regional, national or international educational needs in the food and agricultural sciences.

Purpose of the Program

Grants will be made to U.S. colleges and universities to strengthen their teaching programs in the food and agricultural sciences in the targeted need areas as described herein. The Higher Education Challenge Grants Program is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will: (1) address a State, regional, national, or international educational need; (2) involve a creative or nontraditional approach toward addressing that need which can serve as a model to others; (3) encourage and facilitate better working relationships in the university science and education community, as well as between universities and the private sector, to enhance program quality and supplement available resources; and (4) result in benefits which will likely transcend the project duration and USDA support.

Eligibility

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. Each applicant must have a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. In addition, a grantee institution must meet the definition of a college or university as defined in 7 CFR 3405.2(f), 62 FR 39316, July 22, 1997. An institution eligible to receive an award under this program includes a research foundation maintained by an eligible college or university.

Available Funds

CSREES anticipates that the amount available for project grants under this program in FY 1998 will be approximately $4,067,250. Awards will be based on merit evaluation of proposals by peer review panels and internal staff review.

Targeted Need Areas Supported

For FY 1998, proposals must address one or more of the following targeted need areas: (1) Curricula Design and Materials Development; (2) Faculty Preparation and Enhancement for Teaching; (3) Instruction Delivery Systems; and (4) Student Experiential Learning. A description of these targeted need areas can be found in the Scope of Program section of 7 CFR 3405.6, 62 FR 39316, July 22, 1997. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology).

Degree Levels Supported

For FY 1998, proposals must be directed to undergraduate studies leading to a baccalaureate degree. For purposes of this program, proposals directed to the first professional degree in veterinary medicine also are allowable. Projects directed to the graduate level of study will not be supported.

Proposal Submission Limitations

There is no limit on the number of proposals any one institution may submit. In addition, there is no limit on the number of proposals which may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution.

Project Duration

A regular, complementary, or joint project proposal may request funding for a project period of 18 months to three-years duration.

Matching Requirement

Each grant recipient under the Higher Education Challenge Grants Program is required to match the grant funds awarded on a dollar-for-dollar basis from a non-Federal source(s). The cash contributions toward matching from the institution should be identified in the column ''Applicant Contributions to Matching Funds'' of the Higher Education Budget, Form CSREES–713. The cash contributions of the institution and third parties as well as non-cash

contributions should be identified on Line N., as appropriate, of Form CSREES–713.

Maximum Grant Amount

For a regular or complementary project proposal, the maximum funds that may be requested from CSREES under this program to cover allowable costs during the project period are $80,000. (The total Federal contribution to the budget for a regular or complementary project proposal may not exceed $80,000.) For a joint project proposal, the maximum funds that may be requested from CSREES under this program to cover allowable costs during the project period are $160,000. (The total Federal contribution to the budget for a joint project proposal may not exceed $160,000). Please refer to the Administrative Provisions for this program at 7 CFR 3405.2, 62 FR 39316, July 22, 1997, for the definitions of regular, complementary, and joint project proposals.

Note: These maximums are for the total duration of the project, not per year.

Funding Limitations Per Institution

The maximum total funds that may be awarded to an institution under this program in FY 1998 are $200,000. Of funds awarded for either joint, complementary, or regular project proposals, only the grant funds retained by the grantee institution will count against the grantee institution's maximum of $200,000. Funds awarded by lead institutions to other colleges and universities through subcontracts or subgrants will count against each respective institution's maximum of $200,000.

Maximum Number of Grants Per Institution

For FY 1998, a maximum of three grants may be awarded to any one institution under the Higher Education Challenge Grants Program.

Evaluation Criteria

For the FY 1998 competition, the peer review panel(s) will consider the following criteria and weights to evaluate proposals submitted for funding:

Note: In accordance with 7 CFR 3405.15, the evaluation criteria specified below differs from and takes precedence over the evaluation criteria in the administrative regulations.

Evaluation criterion	Weight
(a) Potential for addressing a State, regional, national or international need	65 points.
This criterion assesses the potential of the project to add value by advancing the quality of food and agricultural sciences higher education and producing graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. This criterion includes the following elements: impact, innovation, expected products and results, and continuation plans.	
(1) Impact—Does the project address a clearly documented State, regional, national, or international need? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period?	
(2) Innovation—Is the project based on an innovative or a non-traditional approach toward solving a higher education problem.	
(3) Products and results—Are the expected products and/or results of the project clearly explained? Will the project contribute to an improvement in the quality or diversity of the Nation's food and agricultural scientific and professional expertise base?	
(4) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	
(b) Potential of submitting institution(s) to successfully complete project objectives	70 points.
This criterion assesses the soundness of the proposed approach, the adequacy of human and physical resources available to carry out the project, the institution's commitment to the project, partnerships and collaborative efforts, its cost-effectiveness, and the extent to which the total budget adequately supports the project.	
(1) Proposed approach—Are the objectives achievable, logical, and based on review of literature? Is the plan of operation managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Is the timetable realistic?	
(2) Resources—Are there adequate institutional resources to carry out the project? Do the project personnel possess requisite expertise to complete successfully the project? Have personnel committed adequate effort to achieve stated objectives and anticipated outcomes? Will the project have adequate administrative support to carry out the proposed activities? Will the project have access to needed resources such as instrumentation, facilities, computer services, library, and other instruction support resources?	
(3) Institutional commitment—Is there evidence to substantiate that the institution has a long term commitment to support the result(s) and/or product(s) produced by this project, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans?	
(4) Partnerships and collaborative efforts— Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the arrangements for partner(s) and/or collaborator(s) enhance dissemination of the result(s) and/or product(s)?	
(5) Budget and cost-effectiveness—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget for three or more institutions explained clearly and in sufficient detail? Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	
(c) Effectiveness of evaluation plan and potential for dissemination of the result(s) and/or products to other institutions and for utilization by other institutions.	65 points.
This criterion assesses the adequacy of the evaluation strategy, the quality of outcome measures, the expertise and availability of human resources to conduct the evaluation, the record of the key personnel in disseminating advancements in education, e.g., publishing educational articles in peer reviewed journals, the adequacy of the plan for dissemination, and the potential for utilization by other institutions.	

Evaluation criterion	Weight
(1) Evaluation—Does the proposal contain a well-designed plan to evaluate results of the project? Will this plan provide conclusions suitable for convincing a peer review audience of the accomplishment? Does it allow for continuous and/or frequent feedback during the life of the project? Does the evaluation plan contain outcome measures? Are the outcome measures capable of assessing the quality and usefulness of project results and products? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can the outcome measures provide an objective evaluation? Is the outcome assessment designed in such a way that it can assist faculty at other institutions in deciding whether to use project results or products?	
(2) Dissemination—Is there a commitment to submit the results of the project evaluation to peer review by the academic community in the food and agricultural sciences? Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops?	
(3) Utilization—Is it probable that other institutions will adapt the result(s) and/or product(s) of this project for their own use? Can the project serve as a model for others? If successful, is the project likely to lead to education reform? Is the product(s) and/or result(s) likely to provide a significant contribution to the advancement of higher education in the food and agricultural sciences? Are partner(s) and/or collaborator(s) committed to utilize the product(s) and/or result(s)?	

Program Application Materials

An application kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the application kit may be requested from Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting an application kit for the FY 1998 Challenge Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail), and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application kit for the FY 1998 Challenge Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

When and Where To Submit Proposals

An original and seven (7) copies of a proposal must be submitted. Each copy of the proposal must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package. Proposals submitted through the mail must be received on or by February 23, 1998. Proposals submitted through the U.S. mail should be sent to the following address: Challenge Grants Program; Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. Hand-delivered proposals (brought in person by the applicant or through a courier service) must be delivered on or by February 23, 1998, at the following address: Challenge Grants Program; c/o Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W., Washington, DC 20024. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Intent To Submit a Proposal

For the FY 1998 competition, Form CSREES–711, ''Intent to Submit a Proposal,'' is requested for the Higher Education Challenge Grants Program and is due January 22, 1998. Send Form CSREES–711 to Higher Education Programs; Mail Stop 2251; USDA; 1400 Independence Avenue, SW; Washington, DC 20250–2251. Form CSREES–711 also may be faxed to the Higher Education Programs office at (202) 720–2030.

Program Contacts

The Higher Education Challenge Grants Program is managed by the CSREES Higher Education Programs office. For further information concerning the FY 1998 program, contact Dr. Howard Sandberg, National Program Leader for Agricultural Sciences Education, CSREES, USDA, at (202) 720-1973; or via the Internet at: hsandberg@reeusda.gov.

Done at Washington, D.C., this 3rd day of December 1997.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–32246 Filed 12–8–97; 8:45 am]

BILLING CODE 3410–22–P

federal register

Tuesday
December 9, 1997

Part VI

Federal Reserve System

12 CFR Parts 265 and 225

Rules Regarding Delegation of Authority; Final Rule

Real Estate Appraisals; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0991]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is delegating to the Director of the Division of Banking Supervision and Regulation the Board's authority to determine in individual cases that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution. This delegation of authority is intended to aid in the efficient processing of requests for individual exemptions from the Board's appraisal regulation.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Deneen L. Donnley-Evans, Staff Attorney (202/736–5567), Legal Division; or Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202/452–2521), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In 1990, in accordance with the mandates of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 USC 3331 *et seq.*, the federal banking agencies adopted appraisal regulations for federally related transactions within their jurisdiction, and exempted certain real estate-related transactions from the appraisal requirements of Title XI. In June 1994, several existing exemptions to the appraisal regulation were modified and new exemptions were added, including an exemption for individual transactions for which the Board determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution. *See* 12 CFR 265.7. The Board is delegating the authority to determine that an appraisal is not necessary to protect Federal financial and public policy interest or the safety and soundness of a financial institution to the Director of the Division of Banking Supervision and Regulation or the Director's delegee.

Administrative Procedure Act

The Administrative Procedure Act (5 USC 553(b)(A)) exempts ''rules of agency organization, procedure, or practice'' from the notice of proposed rulemaking and public comment requirements. As the Board's delegation rules fall under this exemption, the Board is adopting these amendments without notice-and-comment procedures.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act (5 USC 601 *et seq.*), the Board hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 USC Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 USC 3501 *et seq.*) is contained in this notice.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies) Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. Section 265.7 is amended by adding paragraph (c)(6) to read as follows:

§ 265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

* * * * *

(c) * * *

(6) *Appraisal not required.* To determine pursuant to 12 CFR 225.63(b)(12) that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of an institution.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32159 Filed 12–8–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0990]

Real Estate Appraisals

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is soliciting comments on a proposed amendment to subpart G of the Board's Regulation Y, Appraisal Standards for Federally Related Transactions, to exempt any transaction involving the underwriting or dealing of mortgage-backed securities from the Board's appraisal requirements. This amendment would permit a bank holding company or a nonbank subsidiary of a bank holding company engaged in underwriting and dealing in securities (a so-called section 20 subsidiary) to underwrite and deal in mortgage-backed securities without demonstrating that the loans underlying the securities are supported by appraisals that meet the Board's appraisal requirements.

The Board is proposing this amendment to address concerns raised by bank holding companies regarding the inability of section 20 subsidiaries to actively participate in the commercial mortgage-backed securities (CMBS) market due to the appraisal restrictions of subpart G.

DATES: Comments must be received on or before January 8, 1998.

ADDRESSES: Comments should refer to Docket No. R–0990 and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C., 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45am and 5:15pm, and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00am and 5:00pm weekdays, except as provided in § 261.8 of the Board of Governors' Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Norah M. Barger, Assistant Director (202/452–2402), or Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202/452–2521), Division of Banking Supervision and Regulation; or Deneen L. Donnley-Evans, Staff Attorney (202/736–5567), Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 *et seq.*, directed the federal banking agencies (the agencies) to publish appraisal rules for federally related transactions within the jurisdiction of each agency. The stated purpose of the legislation is to provide that federal financial and public policy interests in real estate-related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.[1]

Section 1121(4) of FIRREA, 12 U.S.C. 3350(4), defines a federally related transaction as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser. Section 1121(5), in turn, defines a real estate-related financial transaction as any transaction that involves: (1) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (2) the refinancing of real property or interests in real property; and (3) the use of real property or interests in real property as security for a loan or investment, *including mortgage-backed securities* (emphasis added).[2] In enacting Title XI, Congress envisioned that competent appraisals in these transactions would reduce the risk of loss to the deposit insurance funds, regulated institutions, and the secondary markets, arising from a financial institution's lending activities where real estate is taken as collateral.

In 1990, in accordance with the mandates of Title XI, the agencies adopted appraisal regulations for federally related transactions within their jurisdiction, and exempted certain real estate-related transactions from the appraisal requirements of Title XI. In June 1994, several existing exemptions to the appraisal regulation were modified and new exemptions were added. At that time, the agencies clarified that a regulated institution investing in a mortgage-backed security or similar instrument need not obtain new Title XI appraisals for the underlying loans so long as the loans met regulatory appraisal requirements for the institution at the time the real estate-secured loan was originated.[3] This requirement also applies to the activity of underwriting and dealing in mortgage-backed securities.

In adopting this requirement, the agencies did not foresee that requiring evidence that the loans underlying mortgage-backed securities had appraisals would be a difficult task. The mortgage securities market consisted of securitized 1-to-4 family residential loans, most of which were generated in accordance with the agencies' appraisal requirements. The appraisal regulation appears not to have hindered the secondary market in 1-to-4 family mortgages, for two reasons. First, the Federal National Mortgage Association (Fannie Mae) and the Federal National Mortgage Corporation (Freddie Mac) dominate the market for the underwriting and dealing of residential mortgage-backed securities, and neither bank holding companies nor their investment banking competitors have large stakes in this market. Second, banks and bank holding companies have not been prevented from investing in such securities, even though the underlying mortgages may not have conforming appraisals, because the interagency appraisal regulations contain an exemption for any transaction that qualifies for sale to, or involves a residential real estate transaction in which the appraisal conforms to the appraisal standards of, a United States government or government-sponsored agency, including Fannie Mae and Freddie Mac. However, recent developments in the emerging CMBS market, including the recovery of the commercial real estate market, the wider acceptance of collateralized securities, the significant expansion of the CMBS market, and the operation of the agencies' appraisal regulations, have worked to bar banking organizations from actively participating in the CMBS market's growth.

Proposed Amendment

The Board proposes to amend its real estate appraisal regulation to permit bank holding companies and their nonbank subsidiaries to underwrite and deal in mortgage-backed securities without demonstrating that the loans underlying the securities are supported

[1] *See* Title XI's Statement of Purpose. 12 U.S.C. 3331.

[2] *See* 12 U.S.C. 3350(5).

[3] *See* 59 FR 29482 (1994).

by appraisals that meet the Board's appraisal requirements. However, in practice, the proposed amendment would only apply to the section 20 subsidiaries because, to date, section 20 subsidiaries are the only regulated-institution affiliates permitted to underwrite or deal, to a limited extent, in corporate debt and equity securities.[4]

The CMBS Securities Market

The CMBS market has been in existence since the mid-1980s, with banking organizations, investment banks, and insurance companies serving as the primary underwriters of CMBS. Recently, there has been significant growth in new CMBS issues. In 1996, $30 billion of new CMBS were issued, a 50 percent increase over the $20 billion issued in 1994, and new issuances of $25 billion to $35 billion are expected in 1997.[5] Approximately 90 percent of the tranches of new CMBS issues are rated investment grade.

In recent years, the majority of new CMBS issuances have involved loans originated by nonbank financial companies that are not subject to the agencies' appraisal requirements.[6] While the Board has not studied whether these companies generally obtain appraisals conforming to Title XI requirements upon origination of the underlying loans, anecdotal evidence suggests that many of the underlying loans originated by these institutions do not have Title XI conforming appraisals. In addition, although commercial bank participation as lenders and investors in this market is expected to increase as larger national and regional banking organizations reenter the real estate lending business, banking organizations and their affiliates currently are precluded from actively participating in this market because the majority of the loans underlying CMBS issuances do not have Title XI conforming appraisals.

Policy Considerations

As noted above, Title XI's purpose and intent was to protect ''federal financial and public policy interest'' in real estate-related transactions.[7] Those ''federal interests'' were described in predecessor legislation and accompanying Congressional reports as encompassing the federal government's role as: (1) regulator and insurer of financial institutions; (2) guarantor or lender on mortgage loans; (3) as a direct party itself in real estate-related transactions; and (4) as the overseer of financial markets and real estate-related investments therein.[8]

The Board believes that permitting section 20 subsidiaries to underwrite and deal in mortgage-backed securities without obtaining appraisals that meet the Board's appraisal requirements will not lead to substantial losses for bank holding companies or pose a systemic risk to the banking system. The Board notes that section 20 subsidiaries have the expertise necessary to evaluate the credit risks involved in underwriting and dealing mortgage-backed securities. In this regard, the Board notes that, section 20 subsidiaries are subject to an operational and managerial infrastructure inspection prior to being permitted to engage in corporate underwriting. Periodic inspections verify that proper underwriting and risk management procedures are in place.

When a section 20 subsidiary serves as lead underwriter, it is responsible for performing adequate due diligence. In other instances, such as the dealing of an outstanding debt security, a section 20 subsidiary may rely on the due diligence performed by independent rating agencies. These due diligence efforts often include analyses of factors such as payment history, mortgage and security structure, borrower's income or property cash flow, credit enhancements, and seasoning. In most CMBS transactions, the underlying loans have demonstrated their ability to perform over some period of time. As the underlying commercial real estate loans in the CMBS season, the Board believes that appraisals obtained at origination become increasingly less relevant to the CMBS investment decision because the market assumptions upon which the appraisals were based become obsolete. Further, the public rating or due diligence that must be obtained for CMBS provides information that is at least as sufficient for assessing risks as requiring new appraisals if appraisals were not obtained at loan origination. For residential mortgage-backed securities, the market is well established with very clear standards for loan documentation and underwriting. In light of the foregoing, the Board concludes that permitting section 20 subsidiaries to underwrite and deal in CMBS without demonstrating that the loans underlying the CMBS are supported by appraisals that meet the Board's appraisal requirements would not adversely affect financial markets and real estate investments therein.

Regulatory Flexibility Act Analysis

This proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because, if adopted, the proposal would not impose additional burdens on bank holding companies or their section 20 subsidiaries.

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in this proposal.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828o, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 331–3351, 3907, and 3909.

2. In subpart G, § 225.63 is amended by removing the word ''or'' at the end of paragraph (a)(11), by redesignating paragraph (a)(12) as paragraph (a)(13), and by adding a new paragraph (a)(12) to read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

[4] Consistent with the Board's policy of imposing operating restrictions according to risk, the Board also proposes to permit section 20 subsidiaries to underwrite and deal in both residential and commercial mortgage-backed securities without demonstrating that the loans underlying the securities are supported by appraisals that meet the Board's appraisal requirements. In this regard, the Board notes that residential mortgage-backed securities are considered far less risky than CMBS as 1-to-4 family residential mortgages have one of the lowest historical loss rates of any credit-related asset class. The Board expects this exemption to affect a relatively small number of transactions because, as previously noted, the vast majority of loans underlying residential mortgage-backed securities meet the appraisal standards of Fannie Mae or Freddie Mac, and thus qualify for an exemption under the agencies' appraisal regulations. *See e.g.* 12 CFR 225.63(a)(10).

[5] Between 1992 and 1996, approximately $100 billion of CMBS were issued, all of which are still outstanding.

[6] For example, of the $30 billion of new CMBS issued in 1996, only $2.4 billion involved the collateralization of loans underwritten by commercial banks.

[7] *See* Title XI's Statement of Purpose. 12 U.S.C. 3331.

[8] *See Real Estate Appraisal Reform Act of 1988,* H.R.Rep. No. 100–101, 100th Cong., 2d Sess., pt. 1 at 19 (1988); 135 CONG. REC. H10, 709 (daily ed. November 20, 1987) (statement of Rep. Barnard).

(12) The transaction involves underwriting or dealing in mortgage-backed securities; or

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32160 Filed 12–8–97; 8:45 am]

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federal register

Tuesday
December 9, 1997

Part VII

The President

Proclamation 7058—National Pearl Harbor Remembrance Day, 1997

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

Presidential Documents

Title 3—

The President

Proclamation 7058 of December 5, 1997

National Pearl Harbor Remembrance Day, 1997

By the President of the United States of America

A Proclamation

December 7, 1941, marked a turning point in the history of our Nation, a defining moment that would alter the lives of millions of Americans and change forever America's destiny. On that quiet Sunday morning, the forces of Imperial Japan attacked the U.S. naval base at Pearl Harbor in Hawaii, killing or injuring more than 3,000 Americans, crippling our Pacific Fleet, and critically damaging our airpower. In that moment of supreme crisis, the essential greatness at the core of the American spirit was revealed. Our response was not despair, but determination. Inspired by the leadership of President Franklin Roosevelt and buoyed by his faith that we ultimately would prevail, America went to war.

Looking back across the years, we rightly are still awed by what the American people accomplished during World War II. United in spirit and purpose after the attack on Pearl Harbor, millions of men and women joined the Armed Forces; by war's end, some 15 million had served. They fought fiercely and with uncommon courage in battlefields across the globe. In the Pacific, step by bloody and painstaking step, they took back the islands captured by Imperial Japanese forces in the days after Pearl Harbor. The names of those battles still resonate through the years: Coral Sea, Midway, Guadalcanal, Iwo Jima. On the western front, facing the daunting power of the Nazi war machine, Americans and our Allies struggled and died to liberate Europe, fighting in the stormy North Atlantic, in the searing heat of North Africa, and in the flak-filled skies over France and Germany.

Americans on the home front responded with equal gallantry and strength. Stepping forward to close the gap left by departing servicemen, the very young, the elderly, minority workers, and women filled America's factories and shipyards. Working around the clock, they built the ships, planes, tanks, and guns that armed the forces of freedom and made our Nation the ''Arsenal of Democracy.'' In fields, on farms, and in neighborhood Victory Gardens, they produced the food to sustain our Nation, our troops, and our Allies. Millions left their homes to do their part, and few American families were untouched by the hardships and sacrifices demanded by this unprecedented effort.

While more than half a century separates us from the attack on Pearl Harbor, we still can learn much from the example, achievements, and heroic deeds of those Americans who preserved the flame of liberty and passed it around the world. They taught us that America is the world's best hope for freedom and democracy and that we must never shrink from the responsibilities of that leadership. They taught us the need for constant vigilance, a powerful military, and strength of character. They showed us that, when Americans are united in heart and mind, there is nothing we cannot accomplish together.

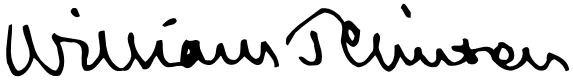
As we remember Pearl Harbor, let us also remember and give thanks for that great and gallant leader, Franklin D. Roosevelt, whose memorial we dedicated earlier this year in our Nation's Capital. In December of 1941, in one of our Nation's darkest hours, he proclaimed his faith in the ultimate victory of freedom over tyranny that, sadly, he did not live to see:

With confidence in our armed forces, with the unbounding determination of our people, we will gain the inevitable triumph. So help us God.

The Congress, by Public Law 103–308, has designated December 7, 1997, as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 1997, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

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



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