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Monday
November 9, 1998

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WASHINGTON, DC

WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
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RESERVATIONS: 202–523–4538

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

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RIN 0560–AD92

Tobacco Warehouses

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing tobacco warehouses under the United States Warehouse Act (USWA). A proposed rule was published in the July 28, 1995, **Federal Register** (60 FR 38766). On June 20, 1997, a final rule covering only administrative changes to various commodity regulations was published in the **Federal Register** (62 FR 33539). Included in that final rule were two administrative changes which had been included in the tobacco warehouse proposed rule. Therefore, this final rule does not address those two administrative changes. In the proposed rule the Farm Service Agency (FSA) proposed excluding tobacco auction warehouses from USWA licensing requirements. This final rule adopts the position taken in the proposed rule and excludes those tobacco auction warehouses from licensure under the USWA. FSA has determined that it is not necessary to define ''warehouse'' as suggested in the proposed rule. The USWA, as amended (7 U.S.C. 241 *et seq.*), provides the Secretary of Agriculture with the discretion to establish a voluntary licensing program for public warehouses that store agricultural commodities under a bailment relationship with its depositors. Accordingly, the Secretary will exercise this discretion and through FSA will discontinue licensing tobacco auction warehouses under the USWA and all licenses issued to tobacco auction warehouses covered by this rule will be administratively canceled by Secretarial determination on October 31, 1999. October 31, 1999, was selected as the effective date so as to allow the affected tobacco auction warehouses sufficient notice and time to seek a State license or changes in State law to the extent that this rule may have an effect on warehouse rates. In addition, this final rule makes some minor ''housekeeping'' amendments.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Director, Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue, S.W., Washington, DC 20250–0553; telephone 202–720–2121 or FAX 202–690–3123, e-mail: Steve__Gill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12612

It has been determined that this rule is consistent with the Federalism principles espoused in Executive Order 12612, and does not warrant the preparation of a Federalism Assessment.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments set forth in this final rule do not affect information collection or recordkeeping requirements.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouse operator's part.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

The USWA, as amended (7 U.S.C. § 241 *et seq.*), provides that the Secretary of Agriculture may issue a license for the conduct of public warehouses that store agricultural commodities. The USWA is implemented, as it pertains to tobacco warehouses, by regulations at 7 CFR part 737 and is administered by FSA. Approximately, 1,500 entities hold licenses under the USWA to store one or more of eight different agricultural commodities. Presently, there are six tobacco auction warehouses licensed under the USWA.

Summary of Comments

A proposed rule was published in the **Federal Register** (60 FR 38766) on July 28, 1995. The proposed rule excluded tobacco auction warehouse from licensure under the USWA. Comments from interested parties were due on or before August 28, 1995. A total of 3,242 comments were received from 14 different sectors as follows: 2 Cotton Associations; 1 Chamber of Commerce; 15 Farm Bureaus; 20 Grain Warehouse Associations; 1 High School (FFA Chapter); 60 Interested Parties; 1 Legal Counsel; 3 Law Makers (State or Federal); 3,113 Tobacco Producers; 7 State Agriculture Departments; 3 Stabilization Corporations; 4 Tobacco Producer Associations; 5 Tobacco Warehouse Associations; and 7 Tobacco

Warehouses. Of the above comments 2,964 were against the proposed rule, 275 were in favor of the proposed rule and 3 had no opinion. Of the comments received in opposition to the proposal, 2,236 were in the form of preprinted postcards that were submitted by tobacco producers in Virginia.

Producers not in favor of the proposed rule expressed confidence in the security offered by the USWA and therefore, asked that tobacco warehouses to which they deliver tobacco be allowed to remain licensed under the USWA. Producers in favor of the proposed rule expressed a common concern about the charges assessed by warehouses licensed under the USWA.

The primary functions of tobacco auction warehouses are currently regulated by several USDA agencies. Tobacco auction warehouses approved by the Agricultural Marketing Service (AMS) and FSA may sell producer-owned and dealer-owned tobacco. AMS strictly regulates the manner in which the tobacco must be presented for sale and graded for sale. Further, AMS regulations include detailed recordkeeping requirements. Further, AMS has representatives on-site during all sales of tobacco.

In addition, the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, strictly regulate the sale of tobacco. The Commodity Credit Corporation (CCC) and FSA regulate auction warehouses through the Tobacco Marketing Quota and Price Support Programs they administer. These regulations are codified at 7 CFR part 723 and 1464. Under these regulations, CCC and FSA require that warehouse operators retain detailed records of all tobacco handled by them. The tobacco and the transactions associated with it must be tracked and recorded from the time the tobacco is brought into the warehouse by producers, to the time it leaves the warehouse.

The type and level of regulation by AMS, CCC, and FSA are unique to tobacco auction warehouses. Producers who believe they have not been treated fairly by the warehouse operator may seek relief directly from the on-site representatives of the various Government Agencies. If such allegations are confirmed, under the provisions of 7 CFR parts 723 and 1464, CCC or FSA has the right to take appropriate actions against the tobacco auction warehouse to protect the interests of producers. Accordingly, because tobacco auction warehouses are sufficiently regulated by other USDA regulations, and involve sales, primarily, rather than storage, FSA will discontinue licensing tobacco auction warehouses under the USWA. Additionally, those licenses currently held by tobacco auction warehouse operators will be administratively canceled by Secretarial determination effective October 31, 1999.

List of Subjects in 7 CFR Part 737

Administrative practice and procedure, Agricultural Commodities, Surety Bonds, Tobacco, Warehouses.

Accordingly, the provisions of 7 CFR part 737 are amended as follows:

PART 737—TOBACCO WAREHOUSES

1. The authority citation for part 737 continues to read as follows:

Authority: 7 U.S.C. 241 *et seq.*

2. Section 737.2 is amended by revising the introductory text and paragraph (j) to read as follows:

§ 737.2 Terms defined.

For the purposes of this part, unless otherwise provided, the following terms shall mean:

* * * * *

(j) *Warehouseman.* Any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

* * * * *

3. Section 737.4 is revised to read as follows:

§ 737.4 Grounds for not issuing license.

A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of tobacco, that the warehouseman is insolvent or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the purposes of the act for not issuing such license. Further, a license shall not be issued for any place to which tobacco is delivered by the producers or their agents for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

4. Section 737.34 is revised to read as follows:

§ 737.34 Package arrangement.

(a) Each warehouseman shall arrange the packages of tobacco so that the identification number thereon as required by § 737.33 is visible, readily accessible, and arranged so as to permit an accurate check thereof, unless waived in writing by the Administrator.

(b) If, at any time, a warehouseman shall be offered tobacco in such quantity for storage so as to exceed the capacity of this warehouse, as shown in his license, he shall not accept such tobacco until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to arrange the tobacco in accordance with paragraph (a) of this section.

Signed at Washington, DC, on November 3, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–29898 Filed 11–6–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV98–911–2 FIR]

Limes and Avocados Grown in Florida; Relaxation of Container Dimension, Weight, and Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the container requirements prescribed under the Florida lime and avocado marketing orders. The marketing orders regulate the handling of limes grown in Florida and avocados grown in South Florida and are administered locally by the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees). This rule continues in effect changes to simplify container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. This rule also continues in effect the removal of weight limits on lime and avocado containers packed within a master container, and the relaxation of certain minimum weight requirements on containers of avocados. In addition, this rule continues in effect the elimination of specific container dimension requirements for both limes and avocados, but maintains net weight requirements. These changes are needed to reduce handling costs and provide greater flexibility in lime and avocado packing operations.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–5456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, and Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in Florida, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule continues in effect several changes to the orders' pack and container rules and regulations. It continues in effect changes in container marking requirements for both limes and avocados that reduce the number of times the size for limes and the grade for avocados need to appear on a container. In addition, this rule continues in effect the removal of net weight limits on lime and avocado containers packed within a master container, and the relaxation of certain minimum net weight requirements on containers of avocados. This rule also continues in effect the elimination of specific container dimension requirements for both limes and avocados. Therefore, this rule reduces handling costs and provides greater flexibility in lime and avocado packing operations. The committees met several times to discuss and recommend changes needed in the container regulations. The committees met and unanimously recommended these changes on July 9, 1997, August 13, 1997, and February 11, 1998.

Sections 911.48 and 915.51 of the orders provide authority to issue regulations establishing specific pack and container requirements for limes and avocados, respectively. These requirements are specified under sections 911.311, 911.329 and 911.344 for limes, and under sections 915.305 and 915.306 for avocados. These sections specify, in part, container size, weight, and marking requirements.

This rule makes several changes to the pack and container provisions under the orders. The first change reduces the number of times the size for limes and the grade for avocados need to appear on a container. Sections 911.311(5)(d) and 915.306(a)(6) of the rules and regulations outline the container marking requirements for limes for size and avocados for grade, respectively. Prior to this change, requirements specified that the size for limes be marked in letters at least one inch in height on two sides of the container. For avocados, the grade was to be stamped in letters at least one inch in height on the top and two sides of the lid. This rule relaxes these requirements by establishing that containers be stamped only once, anywhere except the bottom of the container.

The size and grade information on a container is usually applied automatically by machine, or stamped individually by hand. Each time a container is stamped, there is an associated cost. The committees recommended reducing the number of times a container must be stamped, as well as expanding the possible stamp location, to provide handlers additional flexibility, and to reduce costs.

The committees believe this change will benefit both large and small packing operations. Larger operations use automated stamping. Former stamping requirements meant that each packing line needed to have at least two in-line stamp rollers or ink jet printers. In cases where the line had only one stamping device, the containers had to be reversed and run through the line a second time for limes, and three times for avocados. This could take a considerable amount of time. This change allows containers to move more rapidly through the packing line, reduces the number of stamping machines required, and decreases the costs associated with these activities.

Most smaller operations stamp the containers by hand. To meet the prior requirements, each box had to be rotated and stamped in more than one location. This increased the time and effort needed to pack each box. Reducing the number of times a container must be stamped will decrease the amount of labor needed and the associated stamping costs required to meet these requirements.

The requirement that containers be stamped more than once with size or grade information originated from the way limes and avocados were marketed by retailers in the past. Limes and avocados were, at one time, marketed and sold out of the containers in which the fruit was originally packed. Having the information on the container appear in several locations was done so that the customer could read it. However, the way limes and avocados are marketed has changed. Rather than being presented in the shipping container, retailers move the fruit to display bins.

The stamping of containers with required information benefits the retailer and helps the committees check that the lots (shipments) meet order requirements. Retailers tend to buy in large lots, purchasing a specified size and grade. The number of times an individual box needs to be stamped is less important. The committees anticipate that this change will reduce costs and give handlers additional flexibility under the rules and

regulations. Therefore, the committees recommended relaxing the stamping requirements for both limes and avocados.

The next change this rule makes is to the weight limits on individual containers that are packed inside larger master containers. Prior to this rule, sections 911.329(a)(3) and 915.305(b) specified that individual packages of limes or avocados contained within master containers were not to exceed four pounds in weight. This rule relaxes this weight limit, allowing packaged limes or avocados contained within master containers to exceed four pounds in weight.

The committees are always looking for ways to strengthen and expand the market for limes and avocados. One way they do this is through the approval of experimental containers not currently included under the regulations. This is done for market research purposes. The committees use such research to determine the benefits and acceptance of different containers in the marketplace.

The use of master containers packed with limes and avocados in packages in excess of 4 pounds has been approved on an experimental bases. The approvals were made to allow handlers to meet specific requests from their customers. Consequently, these larger sized packages within a master container have been shown to have a market potential.

The committees both discussed the merits of eliminating the four pound limit on packages within a master container. The committees believe this change will provide handlers with additional marketing flexibility, increased sales potential, and with more opportunities to satisfy customers with special needs. Based on the information collected from the use of the trial containers, the committees recommended that the four pound limit on packages within a master container be removed.

This rule also lowers certain minimum net weight requirements for containers of avocados. Section 915.305 specifies minimum weight requirements for avocados packed under the marketing order for avocados grown in Florida. Prior to this rule, regulations specified that avocados be packed in containers of 8.5, 12½, 25, 32, or 34 pounds designated net weights. This rule reduces the net weight requirements of 12½, 25, 32, and 34 pounds to 12, 24, 31, and 33 pounds, as recommended by the Avocado Administrative Committee (AAC). AAC members agreed that the problems prompting this change were more prevalent in the containers associated with the last four weights. Therefore, no change was recommended for the 8.5 pound designated net weight.

Handlers use containers that are associated by size with the minimum weights listed under the rules and regulations. These weight requirements closely match the capacity of the containers. These containers are inspected by the Federal-State Inspection Service (FSIS). One of the things FSIS checks is whether the packed containers meet the established minimum weight requirements.

An allowable tolerance for variation from the requirements is specified under the rules and regulations. With respect to each lot of containers of minimum weights 12½ and 25 pounds, only 5 percent or less, by count, of the individual containers in the lot may fail to meet the applicable specified weight. The tolerance is 10 percent for minimum weights of 32 and 34 pounds. If the allowable tolerances are exceeded, the lot fails inspection and would need to be reworked and repacked before it could meet inspection.

Failing inspection and having to rework a lot after it has been packed results in a considerable loss of time and money for the individual handler. One AAC member used the example of a 12½ pound net weight container packed with 16 ounce avocados in a single layer with 12 avocados per layer to illustrate the problem. He said that when FSIS found the minimum weight to be 8 ounces short in enough boxes to exceed the tolerance, they would fail the lot, requiring it to be redone. Handlers then are forced to make a choice between adding an additional avocado to each container, or risk the possibility of failing the minimum net weight requirement. AAC members concurred with the problem presented by this particular situation. Several handlers stated that rather than risk being underweight, they would force an additional avocado into the container. The handlers agreed that in many cases, this meant that they were literally giving one avocado per pack away.

In addition, members stated that this practice of over packing the containers was having a negative effect on the avocados during shipment. The AAC discussed that some shipments were being received out of the production area in poor condition due to the over filling of containers to ensure compliance with the minimum net weight requirements. The containers were so tightly packed that the avocados were bruised or damaged in transit.

The AAC understands the benefits of a uniform pack. However, in this case, the requirements were having a negative effect on the condition of the avocados. Changing container sizes to better accommodate the required weights would be difficult and costly. Handlers have containers in inventory, and have their equipment adjusted to those containers. By lowering the minimum net weights, handlers will be able to use the boxes they have. This change will also reduce the need to add additional avocados to meet net weight requirements. In addition, it will help reduce the possibility of containers failing the minimum weight requirement, and save handlers the expense of reworking failed lots of avocados. This change also will benefit growers by providing greater packouts and additional grower revenue. Therefore, the AAC recommended lowering the minimum net weights of 12½, 25, 32, and 34 pounds to 12, 24, 31, and 33 pounds designated net weights. However, this action does not change the established tolerances or the requirement for a fairly tight pack.

The final change made by this rule is the elimination of specific container dimension requirements from both orders' rules and regulations. Prior to this rule, requirements included dimensions for all authorized containers of limes and avocados, specifying specific measurements for height, width, and depth. This rule eliminates the specific dimension constraints, but maintains the container net weight requirements.

Sections 911.329 and 915.305 of the rules and regulations outlined container dimension requirements for limes and avocados, respectively. These sections established specific interior dimensions in inches for containers approved for use under the orders. The dimensions varied from a small 5.5 pound container with measurements of 7½ × 11⅞ × 4¼ inches to a large 42 pound container with measurements of 12¾ × 15¼ × 10¾ inches for limes. Avocados also had similar specific interior dimensions, from a small 8.5 pound container with dimensions of 16½ × 13½ × 3¼ inches to a large 34 pound container with dimensions of 11 × 16¼ × 10¾ inches.

A recent review of the containers in use throughout the industry revealed that interior dimensions varied from handler to handler, and in many cases, were different than those specified in the rules and regulations. Some of the differences occurred in the box manufacturing process, where tolerances were granted to allow for equipment adjustments.

While the dimensions of containers have varied throughout the industry, the adherence to the net weight

requirements has not. Under current inspection procedures, the containers are being weighed and checked for compliance with net weight requirements. This means that even though container dimensions may vary somewhat among individual handlers, the essential volume among like containers is the same. Therefore, rather than revising the rules and regulations to incorporate numerous additional containers with specific dimensions, the committees voted to eliminate the references to set measurements while maintaining the container net weight requirements.

The committees concluded that requiring handlers to use containers with specific dimensions is not necessary as long as the containers used contain a net weight specified in the requirements. The committees believe that even with this change, the rules and regulations continue to promote the shipment of a uniform product. The committees also anticipate that this change will reduce costs by allowing handlers to use boxes in inventory, rather than ordering new containers and making adjustments to equipment. They thought that removing specific container dimension requirements provided handlers with additional packing flexibility under the rules and regulations. They also agreed this change made more sense than trying to add the dimensions of all the containers currently in use to the requirements. Therefore, the committees recommended removing the regulations requiring specific interior dimensions for containers. However, all containers must continue to meet the specific net weight requirements as they appear in the rules and regulations.

Section 8e of the Act provides that when certain domestically produced commodities, including limes and avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule changes the container marking and minimum net weight requirements currently issued under these orders. Therefore, no change is necessary in the lime or avocado import regulations.

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

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

There are approximately 111 lime producers and 141 avocado producers in the production area and approximately 33 lime handlers and 49 avocado handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (SBA) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000 (13 CFR 121.601).

Based on the Florida Agricultural Statistical Service and committee information, the average on-tree price for fresh limes during the 1996–97 season was $7.10 per 88 pound box equivalent and shipments totaled 398,279 bushels (55 pound bushel). Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments.

The average price for fresh avocados during the 1997–98 season was $14.60 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 937,568 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many lime and avocado handlers ship other tropical fruit and vegetable products which are not included in the committees' data but would contribute further to handler receipts.

Using these prices, about 90 percent of lime and avocado handlers could be considered small businesses under the SBA definition and about 10 percent of the handlers could be considered large businesses. The majority of Florida lime and avocado producers and handlers may be classified as small entities.

Under § 911.48 and § 915.51 of the marketing orders for limes and avocados grown in Florida, the committees have the authority to establish and modify pack and container requirements for limes and avocados handled under the order. Pack and container requirements outline the types of information and the number of times this information needs to appear on a container. The requirements also list the specific requirements as to container size and weight restrictions the packed container must meet.

This rule makes several changes to §§ 911.311 and 911.329, and §§ 915.305 and 915.306 of the rules and regulations concerning the pack and container requirements for limes and avocados, respectively. This rule simplifies container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. This rule also removes net weight limits on lime and avocado containers packed within a master container, and relaxes certain minimum net weight requirements on packed avocados. In addition, this rule eliminates specific container dimension requirements for both limes and avocados. These changes will reduce handling costs and provide greater flexibility in lime and avocado packing operations.

This rule will have a positive impact on affected entities. The changes were recommended to reduce costs and provide additional flexibility in packing limes and avocados. None of the changes are expected to increase costs associated with the pack and container requirements.

The change in the stamping requirement will allow containers to move more rapidly through the packing line, reduce the number of stamping machines and labor needed, and decrease costs associated with complying with the marking requirements.

The committees believe this change will benefit both large and small packing operations. Larger operations use automated stamping. The former stamping requirements meant that each packing line needed to have at least two in-line stamp rollers or ink jet printers. In cases where the line had only one stamping device, the containers had to be reversed and run through the line a second time for limes, and three times for avocados. This took a considerable amount of time. This change will allow containers to move more rapidly through the packing line, reduce the number of stamping machines required, and decrease the costs associated with these activities.

Most smaller operations stamp the containers by hand. To meet the prior requirements, each box had to be rotated and stamped in more than one location. This increased the time and effort needed to pack each box. Reducing the number of times a container must be stamped will decrease the amount of labor needed and the associated stamping costs required to meet these requirements.

The change in net weight of a container packed within a master container will provide handlers with more options in how they use a master

container, and provide handlers greater flexibility in addressing the needs of customers.

Lowering certain minimum net weight requirements for avocados will reduce the practice of over filling containers to ensure compliance with the minimum net weight requirements. Some handlers have been packing the containers so tightly that the avocados were bruised or damaged in transit. This change will reduce the need to add additional avocados to meet net weight requirements, thus, saving on costs from adding additional fruit to the containers and damaged fruit. This change also will help reduce the possibility that containers will fail the minimum weight requirement, saving the handler the expense of reworking failed lots of avocados. Growers also might benefit from this change. If less fruit damage results in increased customer satisfaction and higher f.o.b. prices, some additional revenue might be passed on to the growers.

A recent review of the containers in use throughout the industry revealed that the interior dimensions varied with each packer, and in many cases, were different than those specified in the rules and regulations. Absent this change eliminating specific container dimensions, some handlers would need to bear the expense of ordering new boxes, and take a loss on the boxes they have in inventory, or petition the committees to expand the list of approved container dimensions. The elimination of specific container dimension requirements from both orders' rules and regulations will reduce costs to handlers by allowing handlers to use boxes in inventory, rather than having to order new containers.

As long as the containers contain enough limes or avocados to meet net weight requirements, the committees believe that different container dimensions are not necessary. The committees believe that even with this change, the rules and regulations will continue to promote the shipment of uniform product, while providing handlers additional latitude in their choice of containers.

These changes are intended to reduce costs and provide additional flexibility for all those covered under the orders. The opportunities and benefits of this rule are expected to be equally available to all lime and avocado handlers and growers regardless of their size of operation.

Other alternatives to the actions approved were considered by the committees prior to making the recommendations. One alternative discussed by the committees regarding the stamping question was to require containers to continue to be stamped on two sides for limes, and on the top and two sides of the lid for avocados. The committees believed that this is a duplicate effort that provides little benefit and increases associated packing costs. They rejected this alternative.

The committees also considered an alternative to the change recommended regarding the weight of containers packed within a master container. The committees discussed establishing another net weight limitation above the current four pound restriction. However, the committees believed that just increasing the weight limit would still limit flexibility and rejected that option.

The AAC considered several alternatives to relaxing specific minimum net weight requirements. One alternative discussed was increasing the percentage tolerance in terms of the number of containers that could fail to meet the weight requirements before the entire lot would fail. Members were concerned that raising the allowable tolerance would have a negative impact on the uniformity of the pack, allowing for too much variance from the standard. There was also concern that this may not fully address the problem. Even with the increased tolerance, to avoid reaching the limit, there would still be cause to over pack containers. Another alternative considered was to change the way the tolerance was measured, changing from containers per lot to an average of containers packed on a given day. Under this alternative, a handler would not know if they had exceeded the allowable tolerance until the end of the packing day. This would mean that if a handler was found to be out of compliance, they would be out of compliance for the whole day, requiring a rework of all the fruit packed that day rather than only the lots that failed. The AAC also considered changing the container requirements to specify containers that were wider and longer than present containers. Discussion concluded that there were already numerous containers and that adding or changing several containers to cover all the weights, sizes, and varieties would make things more complicated. It would also increase the financial burden by requiring the purchase of new boxes, and the modifying of equipment and pallets to accommodate the change. Therefore, the AAC dismissed these alternatives.

Two alternatives to eliminating specific container dimension requirements were presented for discussion. One alternative was to leave all lime and avocado containers as they are now. A review of the containers in use throughout the industry revealed that interior dimensions varied from handler to handler and in many cases, were different than those specified in the rules and regulations. However, not making this change could result in additional costs for handlers. The second alternative centered on adjusting the regulations to accommodate all the containers currently in use. The committees rejected the idea of adding more containers to the regulations as making things overly complicated with little discernible benefit. The committees believed that the recommended change will continue to promote the shipment of uniform product, require no additional cost, and allow handlers additional flexibility in choice of containers. Based on this discussion, this alternative was rejected.

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

Further, the committees' meetings were publicized throughout the lime and avocado industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations. Like all the committees' meetings, the July 9, 1997, August 13, 1997, and February 11, 1998, meetings were public meetings and all entities, both large and small, were able to express their views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on July 13, 1998. Copies of the rule were mailed by the committees' staff to all committee members and lime and avocado handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 11, 1998. No comments were received.

After consideration of all relevant material presented, including the committees' recommendations, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 37475, July 13, 1998)

will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

PART 911—LIMES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 911 which was published at 63 FR 37475 on July 13, 1998, is adopted as a final rule without change.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 53 FR 37475 on July 13, 1998, is adopted as a final rule without change.

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–29936 Filed 11–6–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV98–916–2 FIR]

Nectarines and Peaches Grown in California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule relaxing ''CA Utility'' quality requirements for California nectarines and peaches for the remainder of the 1998 season. The ''CA Utility'' quality requirements are based on minimum quality requirements established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be present in each container marked ''CA Utility.'' The interim final rule increased that percentage to not more than 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that does not cause fruit to fail U.S. No. 1 grade requirements. This rule continues in effect this relaxation for the remainder of the 1998 season. This rule allows more U.S. No. 1 nectarines and peaches to be packed in containers marked ''CA Utility.'' The added packing flexibility provided by this rule is expected to benefit growers, handlers, and consumers.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR Parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12866, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect, for the remainder of the 1998 season, the modification to the orders' administrative rules and regulations relaxing the ''CA Utility'' quality requirement by allowing more U.S. No. 1 grade nectarines and peaches in containers marked ''CA Utility.'' Prior to the publication of an interim final rule (63 FR 50461, September 22, 1998), the term ''CA Utility'' meant that not more than 30 percent of the nectarines and peaches in any container could meet or exceed the requirements of the U.S. No. 1 grade, and that the fruit meet other specified requirements. The interim final rule increased that percentage to 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that will not cause the fruit to fail to meet the requirements of U.S. No. 1. This relaxation is in effect for the remainder of the 1998 season only, and allows more No. 1 grade fruit to be packed as ''CA Utility'' quality.

The Nectarine Administrative Committee (NAC) and Peach Commodity Committee (PCC) (committees) met on September 15, 1998, to discuss this relaxation. At that time, the NAC voted without opposition to recommend the increased percentage of U.S. No. 1 nectarines with non-scoreable blemishes. The PCC voted with eight in favor and one opposed to recommend a similar change. The member opposed believed that it was too late in the season to make such a change, that such a change would disadvantage those who had already

shipped ''CA Utility'' fruit in 1998, and that more study and analysis of the situation was needed.

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not ''serious damage.''

The minimum grade, size, and maturity requirements in § 916.356 applicable to shipments of California nectarines apply during the period April 1 through October 31 each year. The minimum grade, size, and maturity requirements in § 917.459 applicable to shipments of California peaches apply during the period April 1 through November 23 each year.

Since the 1996 shipping season, the nectarine and peach regulations have allowed ''CA Utility'' quality to be shipped during the regulatory periods. Utility quality is a lower-quality fruit than U.S. No. 1.

Containers marked as ''CA Utility'' must be inspected by the Federal or Federal-State Inspection Service and certified as meeting the ''CA Utility'' quality requirements. Part of the inspection process is to evaluate containers of fruit in accordance with the requirements of the U.S. Standards for Grades of Nectarines, the U.S. Standards for Grades of Peaches, and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be ''scored'' as defects which are damaging to the grade of the fruit, while some other blemishes are not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed ''scoreable'' defects; and in the second instance, the blemishes are termed ''non-scoreable.'' It was the recommendation of the committees that such non-scoreable blemishes must be present on at least one-quarter of the 40 percent of the fruit grading U.S. No. 1 in boxes marked ''CA Utility.''

While containers marked ''CA Utility'' fruit are subject to relaxed quality requirements, all other requirements of the orders must be met.

In addition to the grade requirements, §§ 916.350 and 917.442 require each package or container of nectarines and peaches, respectively, shipped which meets the requirements of ''CA Utility,'' to be conspicuously marked with the words ''CA Utility'' on a visible display panel.

Through August 31 of the 1998 season, shipments of ''CA Utility'' quality nectarines and peaches averaged about 4 percent of total shipments. In prior seasons, utility quality shipments have been less than 2 percent. The increase this season has been attributed to quality problems resulting from heavy early season rains. Also, hail storms later during the season damaged some fruit and rendered it unsalable, while some fruit sustained only moderate scarring. This was especially true for nectarines, whose smooth skin does not provide the same protection as the fuzzy exterior of peaches.

Preliminary studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign buyers found the lower-quality fruit acceptable in some markets. Shipments of ''CA Utility'' nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. In 1997, shipments of ''CA Utility'' nectarines represented 1.1 percent of all nectarine shipments, or approximately 230,000 boxes. Shipments of ''CA Utility'' peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of ''CA Utility'' peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes. By contrast, shipments of ''CA Utility'' nectarines represented 4.0 percent of all nectarine shipments, or approximately 694,881 boxes by August 31 of the 1998 season. Shipments of ''CA Utility'' peaches represented 4.0 percent of all peach shipments, or approximately 544,065 boxes by August 31 of the 1998 season.

The interim final rule amended §§ 916.356 and 917.459 by revising paragraph (a)(1) under each section to allow not more than 40 percent U.S. No. 1 grade fruit to be packed in containers marked as ''CA Utility'' except that at least one-quarter of the fruit grading U.S. No. 1 in such container must have non-scoreable blemishes. This final rule continues in effect that revision.

At the September 15, 1998, committee meetings, comments supporting the recommendation were made by handlers who had experienced incidents where the percentage of U.S. No. 1 fruit contained in their ''CA Utility'' boxes was found to be higher than permitted by the orders' rules and regulations. In those instances, they were forced to repack the boxes, move blemished fruit to boxes containing all U.S. No. 1 fruit, or discard or donate the fruit.

At least one handler complained that the fruit with non-scoreable blemishes was unsightly in the type of U.S. No. 1 box he offered to the marketplace and to his customers. His preference was to place the fruit with non-scoreable blemishes in boxes marked ''CA Utility.'' The limitation of not more than 30 percent U.S. No. 1 fruit in boxes marked ''CA Utility'' became a greater hindrance as the season progressed. The handler also noted that an unseasonable morning rain in late summer caused dark stains on the skin of nectarines, rendering them unsuitable for inclusion in his U.S. No. 1 boxes. He preferred including such fruit in the ''CA Utility'' boxes, but doing so caused the ''CA Utility'' boxes to contain more than the 30 percent U.S. No. 1 fruit permissible.

A niche market exists for utility quality fruit and the relaxation provided by the interim final rule presented an opportunity for handlers to market somewhat better quality ''CA Utility'' fruit to meet demand. Allowing ten percent more U.S. No. 1 grade fruit to be packed as ''CA Utility'' quality requirements allowed more fruit to be marketed as ''CA Utility'' if handlers prefer to do so. ''CA Utility'' quality fruit is generally made available at lower prices to especially benefit lower-income consumers.

Some committee members initially continued to support limiting the amount of U.S. No. 1 grade fruit that can be included in a utility pack to 30 percent of the total in any container to maintain distinct differences between U.S. No. 1 containers and ''CA Utility'' containers. However, after further discussion, it was agreed that a greater percentage of U.S. No. 1 in a ''CA Utility'' container would not be confusing if such fruit were also blemished. It was, therefore, agreed that an additional 10 percent U.S. No. 1 would be permitted except that every piece of fruit in that 10 percent must possess a non-scoreable blemish. This relaxation is in effect for the remainder of the 1998 season. Boxes marked ''CA Utility'' should be clearly distinct from boxes containing U.S. No. 1 grade. Failure to provide a clear distinction could cause confusion in the marketplace and would not meet the goal of providing low-cost fruit to low-income consumers. It was the opinion of the committees that this relaxation would not cause confusion among buyers.

Data on recent production and shipments of California nectarines and peaches appear to indicate that ''CA Utility'' quality fruit can be marketed successfully without interfering with sales of higher quality fruit. In fact, some handlers noted that they used the ''CA Utility'' box as a ''safety net.'' Fruit which was not good enough to meet their own criteria for packing in U.S. No. 1 boxes could be better utilized in boxes of ''CA Utility.'' The advent of ''CA Utility'' quality requirements has given handlers the increased flexibility to improve the overall appearance of their U.S. No. 1 shipments.

For these reasons, the NAC and PCC recommended, for the remainder of the 1998 season, that the percentage of U.S. No. 1 nectarines and peaches permitted in containers marked as ''CA Utility'' quality be increased from 30 percent to 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. This relaxation remains in effect for the remainder of the 1998 season. The committees also voted to review the percentages during the winter.

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

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000. Small agricultural producers have been defined as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities.

Under §§ 916.356 and 917.459 of the orders, grade and size requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect during the period April 1 through October 31 each year for nectarines, and April 1 through November 23 for peaches. The interim final rule relaxed, for the remainder of the 1998 season only, the definition of ''CA Utility'' quality for California nectarines and peaches. The ''CA Utility'' quality requirements are based on minimum quality requirements established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be contained in the utility pack. Prior to the publication of the interim final rule, the ''CA Utility'' quality requirement permitted not more than 30 percent of the nectarines or peaches in any container to meet or exceed the requirements of a U.S. No. 1. The interim final rule increased that percentage to not more than 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such container must have non-scoreable blemishes. A non-scoreable blemish is a defect that does not cause the fruit to fail to meet U.S. No. 1 grade requirements. This rule continues this relaxation and is expected to benefit growers, handlers, and consumers.

Since the 1996 shipping season, the nectarine and peach regulations have allowed ''CA Utility'' quality fruit to be shipped during the regulatory periods. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not ''serious damage.'' ''CA Utility'' quality is a lower-quality fruit than U.S. No. 1 and has been regulated since its inception in the 1996 season. Through August 31 of the 1998 season, shipments of utility quality for both nectarines and peaches have averaged about 4 percent of total shipments. In prior seasons, utility quality shipments have been in the 1 to 2 percent range. The increase so far this season is mostly attributed to quality problems resulting from heavy early season rains.

A niche market exists for ''CA Utility'' quality fruit and the relaxation provided by the interim final rule presented an opportunity for handlers to market somewhat better quality ''CA Utility'' fruit to meet demand.

According to comments made at the meeting on September 15, 1998, changing the requirements to allow additional U.S. No. 1 fruit to be packed in ''CA Utility'' containers did not disadvantage those handlers who had already finished for the season. Those handlers were able to put fruit grading U.S. No. 1 into their U.S. No. 1 containers. Since they would have likely wanted to pack such fruit in these containers to receive the higher return anticipated for U.S. No. 1 fruit, they have not been harmed economically. Therefore, no harm was done by implementing this relaxation that late in the season.

Therefore, the NAC and PCC recommended changing the ''CA Utility'' quality at their September 15, 1998, meetings by modifying the percentage of U.S. No. 1 fruit in each box. The committees also voted to review the percentages during the winter.

In §§ 916.350 and 917.442 of the orders regulating nectarines and peaches, respectively, lower-quality nectarines and peaches were authorized for shipment as ''CA Utility'' as an experiment for the 1996 season only. Such authorization was continued during the 1997 and 1998 seasons. The interim final rule increased the percentage of U.S. No. 1 nectarines and peaches which could be packed in a container marked ''CA Utility'' for the remainder of the 1998 season except that the fruit grading U.S. No. 1 must have a specified percentage of non-scoreable blemishes.

During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there were approximately 210,000 boxes of nectarines and approximately 366,000 boxes of peaches packed as ''CA Utility,'' or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were approximately 230,000 boxes of nectarines and 217,000 boxes of peaches packed as ''CA Utility,'' or 1.1 percent and 1.0 percent of fresh shipments, respectively. By contrast, shipments of ''CA Utility'' nectarines represented 4.0 percent of all nectarine shipments, or approximately 694,881 boxes by August 31 of the 1998 season. Shipments of ''CA Utility'' peaches represented 4.0 percent of all peach shipments, or approximately 544,065 boxes by August 31 of the 1998 season. Continued availability of ''CA Utility'' quality fruit with the increased percentage of non-scoreable defects is expected to have a positive impact on producers, handlers, and consumers by

permitting more nectarines and peaches to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

The committees considered several alternatives at the meeting. One alternative was to leave the percentage of U.S. No. 1 nectarines and peaches permitted in ''CA Utility'' containers unchanged. It was determined that alternative would not address the problem which faced the industry. The NAC and PCC also considered increasing the 30 percent U.S. No. 1 tolerance to not more than 40 percent or to not more than 50 percent, but determined that such a relaxation could render ''CA Utility'' boxes less distinctive from U.S. No. 1 and create confusion in the marketplace. Another alternative included a requirement that at least 90 percent of the individual fruits in all boxes marked with ''CA Utility'' possess defects. Such a requirement would create a box of fruit which would be distinct from U.S. No. 1 due to a greater number of defects present. However, this alternative was determined to be unacceptable because it represented too radical a change of ''CA Utility'' quality given the emergency nature of the recommendation. This alternative failed to offer a sound basis for comparison with the requirement of not more than 30 percent U.S. No. 1 because it did not reference the U.S. No. 1 grade. Such comparison may be necessary as the committees continue to study marketplace reaction to changes in quality requirements of ''CA Utility.''

This action does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in Parts 916 and 917 have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581–0072 and 0581–0080, respectively.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the September 15, 1998, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on September 22, 1998. Copies of the rule were made available to all committee members and nectarine and peach handlers by the committees' staff. The rule was also made available through the Internet by the Office of the Federal Register. That rule provided for a 15-day comment period which ended October 7, 1998. No comments were received.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees, and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 50461, September 22, 1998) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the changes made to the regulations were to relax the ''California Utility'' quality requirements for California nectarines and peaches for the remainder of the 1998 season and the season has ended or will end shortly for these commodities. Accordingly, this rule should be made final as soon as possible. Also, a 15-day comment period was provided for in the interim final rule and no comments were received.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 916 which was published at 63 FR 50461 on September 22, 1998, is adopted as a final rule without change.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 917 which was published at 63 FR 50461 on September 22, 1998, is adopted as a final rule without change.

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–29937 Filed 11–6–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 318

Defense Threat Reduction Agency (DTRA)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule changes the name ''Defense Special Weapons Agency'' to ''Defense Threat Reduction Agency (DTRA)''. This name change is made to reflect the organization restructuring as defined in DoD Directive 5105.62.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 318

Privacy.

PART 318—[AMENDED]

1. The authority citation for part 318 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. The heading of 32 CFR part 318 is revised to read ''Defense Threat Reduction Agency (DTRA)''

3. Sections 318.1(b)(1), 318.4(a), 318.5(a), 318.6(a), 318.9(a), 318.11(a) are amended by revising ''Defense Special Weapons Agency'' to read ''Defense Threat Reduction Agency''.

4. Sections 318.1 (b)(1) and (d), 318.2, 318.3 (b), (c), and (d), 318.9 (a), (b) introductory text, (b)(1) and (b)(4), 318.10, 318.11 (b), (d) introductory text, and (d)(3)(1), are amended by revising ''DSWA'' to read ''DTRA''.

5. Sections 318.1(c), 318.2, and 318.3(a) are amended by revising

''Headquarters, Defense Special Weapons Agency'' to read ''Defense Threat Reduction Agency''.

6. In § 318.3 footnote (1) in paragraph (d) is amended by revising ''Headquarters Defense Special Weapons Agency, Washington, DC 20305–1000'' to read ''Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517''.

7. Sections 318.4(d), 318.6(b), 318.8(b) are amended by revising ''Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398'' to read ''Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517''.

8. Section 318.2 is amended by removing the acronyms ''HQ'' and ''FC'' and the words ''Field Command''.

Dated: November 2, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29848 Filed 11–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–97–020]

RIN 2115–AE47

Drawbridge Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Flagler Memorial, Royal Park, and Southern Boulevard drawbridges across the Atlantic Intracoastal Waterway at Palm Beach County, Florida. This rule has been established as a result of complaints about extensive highway traffic delays caused by bridge openings. This rule is intended to relieve highway congestion while still meeting the reasonable needs of navigation.

DATES: This rule becomes effective on October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Miss Evelyn Smart, Project Manager, Bridge Section, (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 12, 1997, the Coast Guard published a Notice of Proposed Rulemaking entitled Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida, in the **Federal Register** (62 FR 43131). On June 30, 1998, the Coast Guard published a Supplemental Notice of Proposed Rulemaking entitled Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida, in the **Federal Register** (63 FR 35552). The Coast Guard received 14 letters commenting on the supplemental proposal. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard completed an analysis of highway traffic data, traffic analysis and bridge logs provided by the Florida Department of Transportation in 1997. The analysis indicated that the reduced highway level of service and limited number of bridge openings for all three bridges does not warrant additional bridge opening restrictions during the off season summer months. In addition, the analysis and subsequent investigations during 1998 indicate the significant increase in vessel traffic experienced on weekends during the Winter season is beneficial to the local community and should not be unreasonably impacted by bridge opening restrictions which do not provide clearly offsetting benefits to the seasonal traffic across the bridge. The changes to the seasonal weekday opening schedules have been modified to remove the existing 8 a.m. opening on the Flagler Memorial Bridge and the 8 a.m. and 5 p.m. openings on the Royal Park Bridge which will reduce highway traffic delays during commuter periods.

These revised regulations will maintain the existing seasonal weekday 30 minute opening schedules for Flagler Memorial and Royal Park Bridges, and will add a seasonal weekday 30 minute opening schedule to the Southern Boulevard Bridge which now operates on signal. The seasonal restriction for all three bridges will start one month earlier on 1 October to help reduce traffic congestion created by earlier arrival of seasonal visitors to the Palm Beach areas. These changes will relieve seasonal highway congestion while still meeting the reasonable needs of navigation. The amended regulations will still provide an exception to the opening schedules for public vessels of the United States, tugs with tows, and vessels in situations where a delay would endanger life or property.

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The regulations were changed to allow for seasonal bridge schedules to begin on October 1 each year, and there was not sufficient time remaining after the comment period to provide for a delayed effective date.

Discussion of Comments and Changes

Fourteen letters were received in response to the public notice. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service stated in their letters that the proposal would not adversely affect fishery resources and offered neither support nor objection. U.S. Environmental Protection Agency concluded in their letter that this rulemaking would not negatively impact the principal water source in the vicinity of the bridge. The Florida State Historic Preservation Officer stated that the rulemaking would have no effect on any sites listed, or eligible for listing in the National Register. Four letters were in opposition to the proposed rule because they felt that the bridge should not open to the passage of vessels at any time during morning and afternoon rush hours. Although complete closure of 3 bridges over the Intracoastal Waterway for over 3 hours each weekday is considered unreasonable to navigation, two openings during peak traffic periods have been eliminated with this rulemaking. In addition, a 30 minute schedule has been established at the Southern Boulevard Bridge because of increased in-season traffic demands during morning and afternoon rush hour. Four letters were in opposition to the proposed rule because they felt that the existing in-season weekday regulations should be extended to the off-season. However, the lack of highway traffic levels (LOS C) during the off-season and only one opening or less per hour doesn't justify placing additional restrictions on navigation. Two letters were in favor of the rulemaking and recommended that these changes be enforced.

Regulatory Evaluation

This revised rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this

because this revised rule does not effect the exemptions for tugs with tows and emergency situations already contained in the regulations.

Small Entities

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

Because it expects the impact of this revised rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because of the exemption for tugs with tows.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard considered the environmental impact of this revised rule and has determined pursuant to Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A categorical exclusion determination for this rulemaking is available in the public docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard amends 33 CFR part 117, as follows:

PART 117—[Amended]

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

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

2. § 117.261 is amended by revising paragraphs (u), (v) and (w) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

* * * * *

(u) Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach. The draw shall open on signal, except that from October 1 to May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m.; and from 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(v) Royal Park (SR 704) bridge, mile 1022.6 at Palm Beach. The draw shall open on signal, except that from October 1 through May 31, Monday through Friday except Federal holidays, from 7:45 a.m. to 9:45 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:30 p.m., and 5:15 p.m. and from (9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(w) Southern Boulevard (SR 700/80) bridge, mile 1024.7 at Palm Beach. The draw shall open on signal, except that, from October 1 through May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:15 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m. and from 9:15 a.m. to 4:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

* * * * *

Dated: October 20, 1998.

Norman T. Saunders,

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

[FR Doc. 98–29948 Filed 11–6–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0103a FRL–6185–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. This action is an administrative change which revises the definition of volatile organic compounds (VOC) and updates the Exempt Compound list in rules from the Sacramento Metropolitan Air Quality Management District (SMAQMD). The intended effect of approving this action is to incorporate changes to the definition of VOC and to update the Exempt Compound list in SMAQMD rules to be consistent with the revised federal and state VOC definitions.

DATES: This rule is effective on January 8, 1999, without further notice, unless EPA receives adverse comments by December 9, 1998. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Cynthia G. Allen at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Rd., Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules with definition revisions being approved into the California SIP include the following SMAQMD Rules: Rule 101, General Provisions and Definitions; Rule 442, Architectural Coatings; Rule 443, Leaks From Synthetic Organic Chemical and Polymer Manufacturing; Rule 447, Organic Liquid Loading; Rule 452, Can Coating; Rule 456, Aerospace Assembly and Component Coating Operations; and Rule 458, Large Commercial Bread Bakeries. These rules were submitted by the California Air Resources Board to EPA on May 18, 1998.

II. Background

On June 16, 1995 (60 FR 31633) EPA published a final rule excluding acetone from the definition of VOC. On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of VOC. On October 8, 1996 (61 FR 52848) EPA published a final rule excluding HFC 43–10mee and HCFC 225ca and cb from the definition of VOC. These compounds were determined to have negligible photochemical reactivity and thus, were added to the Agency's list of Exempt Compounds.

The State of California submitted many revised rules for incorporation into its SIP on May 18, 1998, including the rules being acted on in this administrative action. This action addresses EPA's direct-final action for SMAQMD Rule 101, General Provisions and Definitions; Rule 442, Architectural Coatings; Rule 443, Leaks From Synthetic Organic Chemical and Polymer Manufacturing; Rule 447, Organic Liquid Loading; Rule 452, Can Coating; Rule 456, Aerospace Assembly and Component Coating Operations; Rule 458, Large Commercial Bread Bakeries. Sacramento Metropolitan AQMD adopted these rules on September 5, 1996. These submitted rules were found to be complete on July 17, 1998, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [1] and is being finalized for approval into the SIP.

This administrative revision adds acetone, perchloroethylene, HFC 43–10mee and HCFC 225ca and cb to the list of compounds which make a negligible contribution to tropospheric ozone formulation. Thus, EPA is finalizing the approval of the revised definitions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under Title I of the Clean Air Act (CAA or the Act).

III. EPA Evaluation and Action

This administrative action is necessary to make the VOC definition in SMAQMD rules consistent with federal and state definitions of VOC. This action will result in more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedences of the ozone health standard by focusing control efforts on compounds which are actual ozone precursors.

The SMAQMD rules being affected by this action to revise the definition of VOC include:

Rule 101—General Provisions and Definitions
Rule 442—Architectural Coatings
Rule 443—Leaks From Synthetic Organic Chemical and Polymer Manufacturing
Rule 447—Organic Liquid Loading
Rule 452—Can Coating
Rule 456—Aerospace Assembly and Component Coating Operations
Rule 458—Large Commercial Bread Bakeries

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 8, 1999, without further notice unless the Agency receives adverse comments by December 9, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 8, 1999, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

F. 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 annual 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 annual 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.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. 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 January 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: October 26, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(255)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(255) * * *

(i) * * *

(A) * * *

(*2*) Rules 101, 442, 443, 447, 452, 456, and 458, adopted on September 5, 1996.

* * * * *

[FR Doc. 98–29965 Filed 11–6–98; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF DEFENSE

48 CFR Part 253

[DFARS Case 98–D018]

Defense Federal Acquisition Regulation Supplement; Contract Action Reporting—Reform of Affirmative Action

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update contract action reporting requirements relating to programs for small business and small disadvantaged business concerns.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D018.

SUPPLEMENTARY INFORMATION:

A. Background

Dod uses DD Form 350, Individual Contracting Action Report, to collect data on contracting actions that obligate or deobligate more than $25,000. This

final rule removes certain data collection requirements at DFARS 253.204–70(e) to reflect recent changes to DFARS guidance concerning programs for small disadvantaged business concerns (63 FR 41972, August 6, 1998), and the expiration of statutory provisions that permitted nonprofit agencies employing people who are blind or severely disabled to participate in acquisitions set aside for small business concerns.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that 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 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 253 is amended as follows:

1. The authority citation for 48 CFR Part 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 253—FORMS

2. Section 253.204–70 is amended by revising paragraphs (e)(1), (2), and (3) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(e) * * *

(1) BLOCK E1. Reserved.

(2) BLOCK E2. Reserved.

(3) BLOCK E3. Reserved.

* * * * *

[FR Doc. 98–29772 Filed 11–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 253

[DFARS Case 98–D009]

Defense Federal Acquisition Regulation Supplement; Contract Action Reporting—1998

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify contract action reporting requirements relating to awards to Federal Prison Industries and government agencies, use of letter contracts, definitization of contracts, orders under agreements and Federal Supply Schedules, simplified acquisition procedures, and women-owned business status.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D009.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses DD Form 350, Individual Contracting Action Report, to collect data on contracting actions that obligate or deobligate more than $25,000. This final rule updates and clarifies the DD Form 350 coding instructions at DFARS 253.204–70 (b) and (d).

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D009.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that 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 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 253 is amended as follows:

1. The authority citation for 48 CFR Part 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 253—FORMS

2. Section 253.204–70 is amended by revising paragraphs (b)(5)(ii)(A), (b)(5)(ii)(B)*(1)*, (b)(13)(i)(A), (b)(13)(i)(B) introductory text, (b)(13)(i)(C), (b)(13)(i)(E), (b)(13)(i)(G), (b)(13)(iv)(I), (b)(14)(iii), (b)(14)(iv), and (d)(5)(vi) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) BLOCK B5A, CONTRACTOR IDENTIFICATION NUMBER. Enter the contractor's 9-position Data Universal Numbering System (DUNS) number (see FAR 4.602(d) and 4.603). For all actions with UNICOR/Federal Prison Industries, use DUNS number 62–662–7459.

(B) * * *

(1) Code Y—Yes. Enter code Y when the contractor is a Federal/State/local government agency of the United States and outlying areas (see 204.670–1(d)). Do not use code Y when the government agency is an educational institution.

* * * * *

(13) * * *

(i) * * *

(A) *Code 1—Letter Contract.* Enter code 1 when the contracting action is a letter contract or a modification to a letter contract that has not been definitized.

(B) *Code 3—Definitive Contract.* Enter code 3 when the contracting action is the award or modification of a definitive contract or a modification that definitizes a contract. Code 3 includes the following:

* * * * *

(C) *Code 4—Order under an Agreement.* Enter code 4 when the contracting action is an order or definitization of an order under an agreement other than a blanket purchase agreement. Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and a job order when the contract is created by issuing the order. A call under a blanket purchase

agreement associated with a Federal Supply Schedule, pursuant to FAR 8.404(b)(4), is coded 6. A call under other blanket purchase agreements, pursuant to FAR 13.303, is coded 9. When the contracting action is a modification to an order described in code 4 instructions, enter code 4 in B13A.

* * * * *

(E) *Code 6—Order/Call under Federal Schedule.* Enter code 6 if the contracting action is an order under a GSA or VA Federal Supply Schedule, or a call against a blanket purchase agreement established under a GSA or VA Federal Supply Schedule (see FAR 8.404). Code 6 includes orders under Federal Supply Schedules for items on the Procurement List. When the contracting action is a modification to an order/call described in code 6 instructions, enter code 6 in B13A.

* * * * *

(G) *Code 9—Purchase Order/Call.* Enter code 9 if the contracting action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10), is an award pursuant to FAR Part 13, except when the contracting action is a blanket purchase agreement call pursuant to FAR 8.404(b)(4) (see code 6). When the contracting action is a modification to a purchase order/call described in code 9 instructions, enter code 9 in B13A.

* * * * *

(iv) * * *

(I) *Code J—Definitization of a Letter Contract.* Eneter code J if the contracting action is the definitization of a letter contract, and enter code 3 in Block B13A.

(14) * * *

(iii) *Code C—Simplified Acquisition Procedures Other than FAR Subpart 13.5.* Enter code C if the action resulted from use of the procedures in FAR Part 13, other than those in Subpart 13.5.

(iv) *Code D—Simplified Procedures Pursuant to FAR Subpart 13.5.* Enter code D if the action resulted from use of the procedures in FAR Subpart 13.5.

* * * * *

(d) * * *

(5) * * *

(vi) BLOCK D6, WOMEN-OWNED BUSINESS. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y if the response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is a women-owned business.

(B) *Code N—No.* Enter code N if the contractor's response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is not a women-owned business.

(C) *Code U—Uncertified.* Enter code U if the information is not available because the contractor did not complete the representation under FAR 52.204–5, 52.212–3(c), or 52.219–1(b).

* * * * *

[FR Doc. 98–29771 Filed 11–6–98; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 63, No. 216
Monday, November 9, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 614, and 618

RIN 3052–AB87

Organization; Loan Policies and Operations; General Provisions; Chartered Territories

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend Farm Credit Administration (FCA or Agency) regulations to provide customers of the Farm Credit System (FCS, Farm Credit, or System) with the opportunity to do business with the FCS lender of their choice. The rule proposes to amend regulations to permit farmers, ranchers, and other eligible customers to seek financing and related services from any association or FCS bank operating under title I or II of the Farm Credit Act of 1971, as amended (Act). The rule proposes to eliminate geographic barriers that often prevent an FCS lender from serving customers with operations beyond its designated territory. At the same time, the rule proposes to ensure every eligible customer's continued access to FCS credit and services. It also continues to obligate each Farm Credit Bank (FCB), agricultural credit bank (ACB), and association to extend sound, adequate, and constructive credit and offer related services to eligible customers within its chartered territory. An institution that extends credit or offers related services to borrowers beyond its designated territory must adopt a board policy and a business plan that adequately guide these activities. The rule also proposes to make conforming amendments to other regulations.

DATES: Please send your comments to us on or before February 8, 1999.

ADDRESSES: You may mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may also submit comments via electronic mail to ''*reg-comm@fca.gov*'' or through the Pending Regulations section of our website at ''www.fca.gov.'' You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444;

or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

The FCA proposes to repeal the restrictions in several existing regulations so eligible customers can seek financing and related services from the System institution of their choice. This is the first major step to implement the FCA Board's Philosophy Statement on Intra-System Competition adopted July 14, 1998. We believe that the existing notice and consent restrictions on lending and related services have become burdensome to both borrowers and System institutions. This has been heightened by significant changes in agriculture and the financial markets. The removal of these restrictions will allow associations and System banks operating under title I or II of the Act to increase operating efficiencies and offer better service to creditworthy and eligible borrowers. With the removal of these existing restrictions, System lenders must modify their policies and business plans as necessary to ensure that they continue to operate in a safe and sound manner.

We believe that the most efficient and least disruptive way to provide customers greater flexibility in selecting their FCS lender and service provider is through modification of existing regulations. The rule proposes to amend the regulations in parts 611, 614, and 618 to:

- Repeal the existing notification and consent requirements for lending and related services in §§ 614.4070 and 618.8030;
- Allow eligible customers to apply for credit and related services from any association or Farm Credit bank operating under title I or II of the Act;
- Require each association or Farm Credit bank operating under title I or II of the Act to continue to fulfill its obligation to serve all eligible and creditworthy customers within its designated territory; and
- Continue to promote safety and soundness by requiring each System lender to develop appropriate policies and revise its business plans before material amounts of credit or related services are extended beyond its designated territory.

II. History and Background

Section 1.1 of the Act states that the mission of the FCS is to furnish, on an ongoing basis, sound, adequate, and constructive credit and related financial services to America's agricultural and aquatic producers, their cooperatives, and other eligible rural residents. The FCS is organized as a nationwide network of cooperative banks, associations, and service corporations that are owned and controlled by the farmers, ranchers, aquatic producers or harvesters, and cooperatives that borrow from them. The charter of each System bank and association designates a geographic territory in which the institution will exercise its authorities. Although the two System banks that operate under title III of the Act have national charters to furnish credit and related services to cooperatives and rural utilities, all other System banks and associations have designated territories that cover a specified geographic region.

In the past, the FCA has used its broad power to charter, regulate, and examine System institutions in a way that generally promoted exclusive territories. This policy, which worked well for the agricultural sector in earlier times, now unnecessarily restricts customers' choice of lenders and service providers and hinders the System's ability to provide ample, efficient, and high-quality credit and related services. Consolidations in many sectors of the agricultural economy have created fewer, larger, and more vertically integrated producers that operate in several locations and require more diversified financial services.

Additionally, consolidations in the financial services markets and rapidly changing technologies are creating new sources and methods of delivery for credit and related services that transcend geographic boundaries.

The positive aspects of the former policy have eroded over the past decade as agriculture, in general, and the FCS, in particular, have restructured in response to significant economic changes. As a result of this restructuring, a notable amount of geographic competition has come about in the System. Both title III banks now operate nationally, providing cooperative customers with a choice of lender. In over 130 counties across the country more than one FCS association now offers the same type of financing to eligible borrowers. Thus, in many parts of the country we have seen substantial departures from the notion of exclusive territories. Customers have benefited from this change. Furthermore, no safety and soundness concerns have arisen from FCS institutions that jointly serve these shared designated territories.

Existing § 614.4070 is an obstacle to the ability of consumers to transact business with the System lender that best fits their needs. The current rule details a complex and burdensome set of notice and consent requirements that depend on the location of the customer's operations and headquarters. In most instances, the customer may do business only with the FCS lender that serves the territory in which the customer conducts operations. As a general rule, existing § 614.4070 prohibits an FCS lender from serving customers operating beyond the institution's designated territory unless the FCS institution designated to serve that territory consents. The existing regulation requires notice whenever a System lender finances the out-of-territory activities of an existing borrower who also conducts operations and maintains headquarters in its chartered territory. Another provision of existing § 614.4070 specifies that out-of-territory lending should not constitute a significant shift of loan volume away from the institution's designated territory.

Although some System lenders give the necessary consent freely upon a customer's request, others do not. The burden of obtaining consent and, at times not receiving it, impede the System's ability to serve the needs of eligible customers as Congress intended.

III. Customer Choice for Credit and Related Services

We believe that each FCS institution operating under title I or II of the Act needs greater flexibility to serve all eligible customers, without regard to the location of the customer's operations so long as the services are conducted safely and soundly. For this reason, the FCA proposes to amend § 614.4070 so that eligible customers can freely apply for credit and financial services from the FCS institution of their choice. This approach will benefit the public by increasing the sources and availability of credit and improving the quality of services available from System lenders. Additionally, this rule proposes to provide System institutions with a more flexible regulatory environment so they can improve their operating efficiencies and better serve their customers.

Designating service territories through the chartering process has been, and will remain, the principal method of ensuring that every eligible customer has access to an FCS lender, as Congress intended. Proposed § 614.4070(a) reaffirms that each association and FCS bank that operates under title I or II of the Act is obligated to serve eligible and creditworthy farmers, ranchers, aquatic producers or harvesters, farm-related businesses, and rural homeowners in its designated territory. This obligation encompasses the responsibility to offer an appropriate array of loan products and related services to all types of agricultural and aquatic operations within the bounds of safety and soundness. The designated territory also defines each lender's obligation under the Act to be responsive to the needs of young, beginning, and small farmers. Proposed § 614.4070(a) will ensure that every eligible customer will continue to have an FCS lender that is committed to providing credit and related services in that customer's area.

Proposed § 614.4070(b) permits eligible farmers, ranchers, aquatic producers or harvesters, farm-related businesses, and rural homeowners to seek financing and related services from any association or FCS bank operating under title I or II of the Act. The proposed regulation also allows a bank or association to extend credit, participate in loans, and provide related services to any eligible applicant under its respective title I or II authorities. Implementing this authority for loan participations should help strengthen the System's safety and soundness. In particular it will benefit an FCS lender that has a high concentration of loans in only a few agricultural commodities in its designated territory. These institutions are especially vulnerable to fluctuations in commodity prices and downturns in the agricultural economy. Additionally, geographic restrictions raise concerns because institutions face increased risk to their loan portfolios from adverse weather, disease, and pest damage. Buying and selling participations in loans with other FCS institutions and lenders in other regions of the country help institutions diversify their loan portfolios and limit their exposure to risk in a single commodity and in a specific geographic area. This proposal includes conforming amendments that repeal restrictions on loan participations in existing §§ 614.4000(d), 614.4010(e), 614.4030(b), 614.4040(b), and 614.4050(c).

Proposed § 614.4070 also enhances customer choice for related services. Some associations and FCS banks operating under title I or II of the Act offer their customers related services while other institutions offer none. This proposal will repeal § 618.8030, which contains the same consent and notice restrictions applicable to loans. This change will enable FCS customers to obtain related services even if their local FCS association does not offer the service they require.

Sound business principles dictate the importance of developing and adopting a well-reasoned policy and business plan before any company implements a new or expanded program. New programs for FCS institutions, including the offering of credit and related services provided by this proposed rule, present new opportunities and new risks for System lenders. Proposed § 614.4070(c) is designed to ensure that such programs are operated under the appropriate direction and control of each institution's board of directors.

The FCA Board expects that each FCS institution board will adopt a policy, or revise its existing policy, to address any additional risks created by new programs before an institution conducts a material amount of business with customers in new geographic markets. In considering whether the new business is material, an institution should aggregate the volume of its loans, leases, participations and other interests, and related services. Additionally, each institution should integrate the opportunities and risks created by the new programs into its operational and strategic business plans, as discussed in § 618.8040. In general, the policy and business plan should assess the institution's risk-bearing capacity and servicing capabilities to meet the needs of customers who reside in or conduct operations beyond the institution's designated territory. The institution board, in developing its policy and revising its business plan, should specifically:

• Consider how programs for providing credit and related services to a broader customer base will affect organizational efficiency, customer service, risk management, and operational capabilities;

• Establish specific operating objectives and strategies for such programs;

• Direct and control the institution's lending and related service activities conducted beyond its designated territory, ensuring that such activities are conducted in a safe and sound manner;

• Establish the types and amount of loans, loan participations, and related service activity to be permitted in new geographic markets;

• Assess risk associated with providing loans and related services in the new markets, establish risk-tolerance levels in relation to the institution's risk-bearing capacity, and consider loan portfolio concentrations; and

• Ensure existing loan underwriting criteria for loans and related services that will be offered in new geographic markets are appropriate, taking into consideration the institution's management capabilities and credit expertise, and the servicing requirements of loans made outside its designated territory.

We expect the institution's board, as part of its obligations under the Act, to continue to ensure that the institution sufficiently meets the credit and related services needs of eligible customers within its designated territory, as required by proposed § 614.4070(a). At the same time, we also expect each institution to maintain safe and sound operations, including adequate risk-bearing capacity for any new programs. As part of the board's responsibilities to ensure the continued safe and sound operations of its institution, we encourage each board to monitor, through periodic reporting requirements, the amount, quality, risk, and profitability of loans made to customers located in new geographic markets.

FCA examiners will evaluate each program in view of the potential risks and possible effects on the institution's financial condition, its asset quality, capital, and earnings capacity. To help implement these regulatory revisions in the most safe and sound manner, we will issue additional guidance to our examiners and FCS institutions once the rule becomes final.

IV. Conforming Amendments

Two additional FCA regulations, §§ 611.1124 and 614.4525, contain consent requirements that limit the ability of customers to choose their FCS lender. We propose to revise these regulations.

Section 611.1124 addresses loan transfers that occur when the FCA modifies association charters to transfer territory from one association to another. Under existing § 611.1124(f)(6), loans are usually transferred to the association that acquires the territory, unless the associations agree otherwise. With the proposed change to § 614.4070, there is no reason to assume that any territory transfer would necessarily result in the sale of loans in that territory. As amended, proposed § 611.1124(f)(6) simply requires the association to advise its shareholders whether loans will be sold in connection with the transfer of territory and, if so, the terms of the sale.

The FCA also proposes to repeal provisions in § 614.4525(b) so that cooperation may be enhanced on special loan programs between System lenders and dealers and cooperatives that serve different geographical markets. Additionally, we are proposing to eliminate paragraphs (c) and (d) because the permissive provisions of these two paragraphs are unnecessary. FCS lenders do not need regulatory authority to make contracts with others to facilitate loan applications and closings, because this authority is clearly within their express powers under the Act. This proposal would retain existing paragraph (a) and the remainder of paragraph (b), recognizing that institutions developing and implementing special lending programs should have appropriate policies in place providing board direction and control.

Additionally, the FCA is proposing to delete § 614.4080 in its entirety. This regulation originally addressed cross-territory lending by the banks for cooperatives, but is no longer applicable since both banks that have title III authorities now have national charters as authorized by the Act.

The FCA is also aware that System institutions have entered into a wide variety of agreements to serve customers in different geographic markets. Given the proposed changes to § 614.4070 and related regulations, the FCA requests comment on whether such agreements raise issues that should be addressed in the final rule.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, parts 611, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

2. Section 611.1124 is amended by removing the phrase ''Each borrower whose real estate or operations is located in a territory that will be transferred'' in the first sentence of paragraph (l) and adding in its place, the phrase ''Each borrower whose loan is sold as described in paragraph (f)(6) of this section,''; by removing the last sentence of paragraph (l); and by revising paragraph (f)(6) to read as follow:

§ 611.1124 Territorial adjustments.

* * * * *

(f) * * *

(6) A statement of whether loans will be sold in connection with the transfer of territory and, if so, the terms of the sale.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018,

2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

§ 614.4000 [Amended]

4. Section 614.4000 is amended by removing paragraph (d)(2); by removing the words ''and paragraph (d)(2) of this section'' in paragraph (d)(1); and by redesignating paragraphs (d)(1), (d)(1)(i), and (d)(1)(ii) as paragraphs (d) introductory text, (d)(1) and (d)(2), respectively.

§ 614.4010 [Amended]

5. Section 614.4010 is amended by removing paragraph (e)(2); by removing the words ''and paragraph (d)(2) of this section'' in paragraph (e)(1); and by redesignating paragraphs (e)(1), (e)(1)(i), and (e)(1)(ii) as paragraphs (e) introductory text, (e)(1) and (e)(2), respectively.

§ 614.4030 [Amended]

6. Section 614.4030 is amended by removing paragraph (b)(2); by removing the words ''and paragraph (b)(2) of this section'' in paragraph (b)(1); and by redesignating paragraphs (b)(1), (b)(1)(i), and (b)(1)(ii) as paragraphs (b) introductory text, (b)(1) and (b)(2), respectively.

§ 614.4040 [Amended]

7. Section 614.4040 is amended by removing paragraph (b)(2); by removing the words ''and paragraph (b)(2) of this section'' in paragraph (b)(1); and by redesignating paragraphs (b)(1), (b)(1)(i), and (b)(1)(ii) as paragraphs (b) introductory text, (b)(1) and (b)(2), respectively.

§ 614.4050 [Amended]

8. Section 614.4050 is amended by removing paragraph (c)(2); by removing the words ''and paragraph (c)(2) of this section'' in paragraph (c)(1); and by redesignating paragraphs (c)(1), (c)(1)(i), and (c)(1)(ii) as paragraphs (c) introductory text, (c)(1) and (c)(2), respectively.

9. Subpart B is revised to read as follows:

Subpart B—Credit Extensions, Related Services and Designated Territories

§ 614.4070 Credit extensions, related services, and designated territories—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

(a) Each association or Farm Credit bank operating under title I or II of the Act must furnish sound, adequate, and constructive credit and related services pursuant to section 1.1(a) of the Act to creditworthy and eligible borrowers who reside in or conduct operations in its designated territory.

(b) Eligible customers may seek financing and related services from any association or Farm Credit bank operating under title I or II of the Act, and the Farm Credit bank or association may exercise its powers under subpart A of this part and part 618 of this chapter to make loans, participate in loans, and provide related services to any eligible borrower.

(c) Each association or Farm Credit bank that conducts a material amount of business beyond its designated territory must adopt a board policy and business plan that address such activities.

Subpart O—Special Lending Programs

§ 614.4525 [Amended]

10. Section 614.4525 is amended by removing paragraphs (c) and (d); and by removing the second sentence in paragraph (b).

PART 618—GENERAL PROVISIONS

11. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

§ 618.8030 [Removed]

12. Section 618.8030 is removed.

Date: November 4, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–29998 Filed 11–6–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–222–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 installation of strap assemblies on the ceiling panels and rails that support the video monitors. This proposal is prompted by reports of the video monitor ceiling panels falling into the cabin area due to the failure of certain latch assemblies during turbulence. The actions specified by the proposed AD are intended to prevent such failure, which could cause the ceiling panels to fall into the cabin area, and consequent injury to the crew and passengers.

DATES: Comments must be received by December 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–222–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: Jan Risheim, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1675; 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 98–NM–222–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–114, Attention: Rules Docket No. 98–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received two reports of video monitor ceiling panels falling into the passenger cabin area; these ceiling panels weigh approximately 80 pounds. In both incidents, the cause of the falling video monitor ceiling panels has been attributed to the failure of certain latch assemblies on the subject ceiling panels during turbulence. This condition, if not corrected, could result in ceiling panels falling into the cabin area, and consequent injury to the crew and passengers.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 747–25A3142, dated October 16, 1997, and Revision 1, dated August 6, 1998, which describe procedures for installation of strap assemblies to provide backup support for the ceiling panels with video monitors. Accomplishment of the action specified in the alert service bulletins is intended to adequately address the identified unsafe condition.

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 bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletins

Operators should note that, although the alert service bulletins recommend installing the subject strap assemblies at the first maintenance opportunity, the FAA has determined that an unspecified interval would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation (476 hours). In light of all of these factors, the FAA finds a 24-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 280 airplanes of the affected design in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 476 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,575 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $1,525,400, or $38,135 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.

The FAA recognizes that the proposed installation of strap assemblies would require a large number of work hours to accomplish. However, the 24-month compliance time specified in paragraph (a) of this proposed AD should allow ample time for the installation of strap assemblies to be accomplished simultaneously with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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 98–NM–222–AD.

Applicability: Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–25A3142, Revision 1, dated August 6, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 failure of certain latch assemblies on the ceiling panels, which could cause the ceiling panels to fall into the cabin area, and consequent injury to the crew and passengers, accomplish the following:

(a) Within 24 months after the effective date of this AD, install strap assemblies on the ceiling panels and rails that support the video monitors, in accordance with Boeing Alert Service Bulletin 747–25A3142, dated October 16, 1997, or Revision 1, dated August 6, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 November 2, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–29866 Filed 11–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–52–AD]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth K.G. Models Standard-Cirrus, Nimbus-2, JANUS, and Mini-Nimbus HS–7 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have required installing a safety device for the tailplane locking hook on certain Schempp-Hirth K.G. (Schempp-Hirth) Models Standard-Cirrus, Nimbus-2, JANUS, and Mini-Nimbus HS–7 sailplanes. The proposed AD was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the locking hook on the tailplane attachment bracket from disengaging, which could result in the horizontal tailplane coming loose from the fin with possible loss of longitudinal control of the sailplane. Since issuing the NPRM, the Federal Aviation Administration (FAA) realized that it inadvertently omitted serial number 176 of the Schempp-Hirth Model Nimbus-2 sailplanes from the NPRM. The FAA has determined that this sailplane should be incorporated into the proposed AD, and that the comment period for the proposal should be reopened and the public should have additional time to comment.

DATES: Comments must be received on or before December 11, 1998.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Schempp-Hirth Flugzeugbau GmbH, Postbox 14 43, D–73222 Kirchheim unter Teck, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

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 supplemental notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–52–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Schempp-Hirth Models Standard-Cirrus, Nimbus-2, JANUS, and Mini-Nimbus HS–7 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 17, 1998 (63 FR 33014). The NPRM proposed to require installing a safety device for the tailplane locking hook. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Schempp-Hirth Appendix to Technical Note No. 278–36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

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

Events Since Issuance of the NPRM

Since issuance of the NPRM, the FAA realized that it inadvertently omitted serial number 176 of the Schempp-Hirth Model Nimbus-2 sailplanes from the NPRM.

The FAA's Determination

After examining all information related to the subject described in this document, the FAA has determined that:

—Serial number 176 of the Schempp-Hirth Model Nimbus-2 sailplanes should be added to the AD; and

—AD action should be taken to incorporate these changes to continue to prevent the locking hook on the tailplane attachment bracket from disengaging, which could result in the horizontal tailplane coming loose from the fin with possible loss of longitudinal control of the sailplane.

The Supplemental NPRM

Since adding this additional serial number sailplane to the NPRM proposes actions that go beyond the scope of what was already proposed, the FAA is reopening the comment period to allow the public additional time to comment on this proposed action.

Cost Impact

The FAA estimates that 91 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $35 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,565, or $215 per sailplane.

The only cost difference between this proposal and the original NPRM is the addition of 1 sailplane, or $215.

Compliance Time of the Proposed AD

Although the unsafe condition identified in this proposed AD occurs during flight and is a direct result of sailplane operation, the FAA has no way of determining how much time will elapse before the tailplane is not securely attached to the fin. For example, the condition could exist on a sailplane with 200 hours time-in-service (TIS), but could be developing on a sailplane with 50 hours TIS and not actually exist on this sailplane until 300 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Differences Between the Technical Note, German AD, and This Proposed AD

Both Schempp-Hirth Technical Note No. 278–36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994, and German AD 95–015, dated December 15, 1994, apply to the Model Nimbus-2M sailplanes. This sailplane model is not type certificated for operation in the United States and therefore is not covered by the applicability of the proposed AD.

The Model Nimbus-2M sailplanes could be operating in the United States with an experimental certificate. The FAA is including a NOTE in the proposed AD to recommend that any person operating a Model Nimbus-2M sailplane in the United States with an experimental certificate accomplish the actions specified in the technical note.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Schempp-Hirth K.G.: Docket No. 98–CE–52–AD.

Applicability: The following sailplane models and serial numbers, certificated in any category:

Models	Serial Nos.
Standard Cirrus.	573, 586, 593, 595, 597 through 599, 601 through 701.
Nimbus-2 ...	86, 93, and 96 through 116, 118 through 129, 131, and 176.
JANUS	1 through 55, and 59.
Mini-Nimbus HS–7.	1 through 60, and 65.

Note 1: Both Schempp-Hirth Technical Note No. 278–36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994, and German AD 95–015, dated December 15, 1994, apply to the Model Nimbus-2M sailplanes. This sailplane model is not type certificated for operation in the United States, and therefore is not covered by the applicability of this AD. The Model Nimbus-2M sailplanes could be operating in the United States with an experimental certificate. The FAA recommends that any person operating a Model Nimbus-2M sailplane in the United States with an experimental certificate accomplish the actions specified in the technical note.

Note 2: This AD applies to each sailplane 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 sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent the locking hook on the tailplane attachment bracket from disengaging, which could result in the horizontal tailplane coming loose from the fin with possible loss of longitudinal control of the sailplane, accomplish the following:

(a) Install a safety device for the tailplane locking hook in accordance with Schempp-Hirth Appendix to Technical Note No. 278–

36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Aircraft Certification Office.

(d) Questions or technical information related to the service information referenced in this document should be directed to Schempp-Hirth Flugzeugbau GmbH, Postbox 14 43, D–73222 Kirchheim unter Teck, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in German AD 95–015, dated December 15, 1994.

Issued in Kansas City, Missouri, on October 30, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–29865 Filed 11–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–054]

RIN 2115–AE47

Drawbridge Operation Regulations; Suwannee River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations governing the operation of the CSX Railroad drawbridge (formerly owned by the Seaboard System Railroad) across the Suwannee River, mile 35.0, at Old Town, Dixie/Levy Counties, Florida, to allow the bridge to remain permanently closed. The railroad Right of Way was sold to the State of Florida in 1997 for development of the Nature Coast Trail, a public facility for non-motorized recreational activities. The bridge has not received an opening request since 1981. This action should accommodate the needs of recreational land traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Comments may be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4:00 p.m. Monday through Friday, except federal holidays. The telephone number is (305) 536–4103.

The District Commander maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Manager, Bridge Section, (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking [CGD7 98–054] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed in **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The CSX Railroad bridge is currently governed by 33 CFR 117.333 approved July 20, 1948, which provides for an opening if 5 days advance notice is given. The State of Florida purchased the rail corridor from CSX Transportation, Inc. in December 1997. The bridge was included in this purchase. CSX maintained written records for five years prior to the sale. There is no written evidence of the bridge being opened during this period. Conversations with CSX staff by the State of Florida indicate the bridge has not opened for more than 12 years. Conversations with nearby residents indicate it was last opened in 1981. The State of Florida has requested permission to permanently close the swing bridge due to a continued lack of navigation requiring an opening. Therefore, the Coast Guard has agreed to propose amending the regulations to allow the bridge to remain closed.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary as there has not been a demand for an opening in the last 17 years.

Small Entities

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

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the absence of any vessel traffic in the area of the bridge will not require the bridge to be opened in the future.

Collection of Information

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

Federalism

The Coast Guard has analyzed the rule under the principles and criteria contained in Executive Order 12612,

and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and has concluded under Figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, that the promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.333 is revised to read as follows:

§ 117.333 Suwannee River.

The draw of the Suwannee River bridge, mile 35, at Old Town, need not be opened for the passage of vessels.

Dated: October 22, 1998.

Norman T. Saunders,

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

[FR Doc. 98–29949 Filed 11–6–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 51

RIN 2900–AE87

Per Diem for Nursing Home Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise regulations setting forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. The intended effect of the proposed regulations is to ensure that veterans receive high quality care in State homes.

DATES: Comments must be received by VA on or before January 8, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AE87.'' All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: L. Nan Stout, Chief, State Home Per Diem Program (114), Veterans Health Administration, 202–273–8538.

SUPPLEMENTARY INFORMATION: This document proposes to establish a new part 51 setting forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. Under the proposal, VA would pay per diem to a State for providing nursing home care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current VA certification that the facility meets the standards set forth in proposed subpart D.

This new part would cover material currently in manuals. Also, it would supersede the regulations currently contained in 38 CFR 17.190 through 17.199 that pertain to payment of per diem for nursing home care in State homes.

The standards in proposed subpart D are patterned after the standards of the Department of Health and Human Services that nursing homes must meet to participate in the Medicare and Medicaid programs (see 42 CFR part 483). The standards are intended to set forth minimum requirements necessary to ensure that VA pays per diem for eligible veterans only if the State homes provide high quality care.

The proposed regulations include application and inspection provisions that are designed to ensure that per diem is paid only to facilities that have been inspected and found to meet the proposed standards. Also, in order to ensure continued compliance with the standards, the proposed regulations include an ongoing review and certification program. Further, the proposed regulations contain provisions for withdrawing recognition and stopping payment of per diem if a facility fails to meet the proposed standards.

The proposed rule sets forth the statutory list of veterans for whom per diem may be paid. The proposed rule also contains provisions for determining payment amounts.

The proposed rule would incorporate by reference the 1997 edition of the National Fire Protection Association Life Safety Code entitled ''NFPA 101, Life Safety Code'' and the 1996 edition of ''NFPA 99, Standards for Health Care Facilities.'' The regulations are designed to ensure that State homes meet the fire and safety provisions of the Life Safety Code.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this proposed rule would 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. All of the entities that would be subject to this proposed rule are State government entities under the control of State governments. Of the 93 State homes, all are operated by State governments except for 16 that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of §§ 603 and 604.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), proposed collections of information are set forth in the provisions of §§ 51.20, 51.30, 51.40, 51.70, 51.80, 51.90, 51.100, 51.110, 51.120, 51.150, 51.160, 51.180, 51.190 and 51.210 of this proposed rule.

The information collections in this document concern various activities related to the operation of a State home providing nursing home care to eligible veterans. As required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collections of information.

OMB assigns control numbers to collections of information it approves. VA 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.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue,

NW, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AE87.''

Title: Aid to States for Care of Veterans in State Homes—Nursing Home Per Diem.

Summary of collection of information: VA is proposing to establish the mechanism for paying per diem to State homes providing nursing home care to eligible veterans. VA proposes to require facilities to supply various kinds of information regarding facilities providing nursing home care to ensure that high quality care is furnished to veterans who are residents in such facilities. The information includes an application for recognition based on certification; appeal information; application and justification for payment; records and reports which facility management must maintain regarding activities of residents; to include information relating to whether the facility meets standards concerning residents' rights and responsibilities prior to admission, during admission, and upon discharge; the records and reports which facility management and health care professionals must maintain regarding residents and employees; various types of documentation pertaining to the management of the facility; food menu planning; pharmaceutical records; and life safety documentation.

Description of need for information and proposed use of information: The collections of information contained in the proposed rule appear to be necessary to ensure that VA per diem payments are limited to facilities providing high quality care. Without access to such information VA would not be able to determine whether high quality care is being provided.

Description of likely respondents: State home officials who receive per diem for nursing home care for veterans.

Estimated number of respondents: 13,136.

Estimated frequency of responses: 52,872.

Estimated average burden per collection: 14 minutes.

Estimated total annual reporting and record keeping burden: 12,467 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

List of Subjects in 38 CFR Parts 17 and 51

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 26, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reason set out in the preamble, 38 CFR Chapter I is proposed to be amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.190 [Amended]

2. In § 17.190, the introductory text is amended by removing ''hospital, domiciliary or nursing home'' and adding, in its place, ''hospital or domiciliary''; paragraph (a) is amended by removing ''or nursing home care''; paragraph (b) is amended by removing ''nursing home care patients or''; and paragraph (d) is removed.

§ 17.191 [Amended]

3. Section 17.191 is amended by removing ''domiciliary, nursing home'' and adding, in its place, ''domiciliary''.

§ 17.192 [Amended]

4. Section 17.192 is amended by removing ''nursing home or''.

§ 17.193 [Amended]

5. Section 17.193 is amended by removing the second sentence thereof.

§ 17.195 [Removed]

6. Section 17.195 is removed.

§ 17.197 [Amended]

7. Section 17.197 is amended by removing ''section 1741(a)(2) for nursing home care''.

§ 17.198 [Amended]

8. Section 17.198 is amended by removing ''hospital, domiciliary or nursing home'' and adding, in its place, ''hospital or domiciliary''.

9. A ''Note'' is added immediately following the authority citation for § 17.200 to read as follows:

§ 17.200 Audit of State homes.

* * * * *

Note: Sections 17.190 through 17.200 do not apply to nursing home care in State homes. The provisions for nursing home care in State homes are set forth in 38 CFR part 51.

10. Part 51 is added to read as follows:

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

Subpart A—General

Sec.
51.1 Purpose.
51.2 Definitions.

Subpart B—Obtaining Per Diem for Nursing Home Care in State Homes

51.10 Per diem based on recognition and certification.
51.20 Application for recognition based on certification.
51.30 Recognition and certification.

Subpart C—Per Diem Payments

51.40 Monthly payment.
51.50 Eligible veterans.

Subpart D—Standards

51.60 Standards applicable for payment of per diem.
51.70 Resident rights.
51.80 Admission, transfer and discharge rights.
51.90 Resident behavior and facility practices.
51.100 Quality of life.
51.110 Resident assessment.
51.120 Quality of care.
51.130 Nursing services.
51.140 Dietary services.

51.150 Physician services.
51.160 Specialized rehabilitative services.
51.170 Dental services.
51.180 Pharmacy services.
51.190 Infection control.
51.200 Physical environment.
51.210 Administration.
51.220 VA Form 10–3567—State Home Inspection: Staffing Profile.
51.221 VA Form 10–5588—State Home Report and Statement of Federal Aid Claimed.
51.222 VA Form 10–10EZ—Application for Health Benefits.
51.223 VA Form 10–10SH—State Home Program Application for Veteran Care—Medical Certification.
51.224 VA Form 10–0143A—Statement of Assurance of Compliance with Section 504 of The Rehabilitation Act of 1973.
51.225 VA Form 10–0143—Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.
51.226 VA Form 10–0144—Certification Regarding Lobbying.
51.227 VA Form 10–0144A—Statement of Assurance of Compliance with Equal Opportunity Laws.

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743.

Subpart A—General

§ 51.1 Purpose.

This part sets forth the mechanism for paying per diem to State homes providing nursing home care to eligible veterans and is intended to ensure that veterans receive high quality care in State homes.

§ 51.2 Definitions.

For purposes of this part—

Clinical nurse specialist means a licensed professional nurse with a master's degree in nursing with a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing and at least 2 years of successful clinical practice in the specialized area of nursing practice following this academic preparation.

Facility means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of nursing home care or a building or any part of a building which VA has recognized as a State home for the provision of nursing home care.

Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses' Association.

Nursing home care means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

Physician assistant means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and other clinical tasks under appropriate physician supervision which is approved by the primary care physician.

Primary physician or primary care physician means a designated generalist physician responsible for providing, directing and coordinating all health care that is indicated for the residents.

State means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State home means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the State home also provides domiciliary and/or nursing home care.

VA means the U.S. Department of Veterans Affairs.

Subpart B—Obtaining Per Diem for Nursing Home Care in State Homes

§ 51.10 Per diem based on recognition and certification.

VA will pay per diem to a State for providing nursing home care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility and facility management meet the standards of subpart D of this part. Also, after recognition has been granted, VA will continue to pay per diem to a State for providing nursing home care to eligible veterans in such a facility for a temporary period based on a certification that the facility and facility management provisionally meet the standards of subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.20 Application for recognition based on certification.

To apply for recognition and certification of a State home for nursing home care, a State must:

(a) Send a request for recognition and certification to the Under Secretary for Health(10), VA Headquarters, 810 Vermont Avenue, NW, Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home,

(b) Allow VA to survey the facility as set forth in § 51.30(c), and

(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.30 Recognition and certification.

(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction regarding whether, based on a VA survey, the facility and facility management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the facility, the State official authorized to oversee operations of the State home, the VA Network Director (10N 1–22), Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and facility management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical care center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or facility management does not meet one or more of the standards in subpart D of this part, that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director

of the VA medical center of jurisdiction will notify the official in charge of the facility, the State official authorized to oversee the operations of the State home, the VA Network Director (10N 1–22), Chief Network Officer (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) of the certification, provisional certification, or noncertification.

(b) Once a facility has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or facility management does not meet the standards of subpart D of this part. Recognition of a facility will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and facility management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the facility that have a bearing on compliance with any of the requirements of this part (including any reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home facility management must submit to the director a completed VA Form 10–3567, Staffing Profile, set forth at § 51.220. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or facility management does not meet the standards of this part, the director will notify the State home facility in writing of the standards not meet. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N 1–22), the Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit the appeal to the Under Secretary for Health in writing, within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of VA medical center of jurisdiction will immediately report this to the VA Network Director (10N 1–22), Chief Network Officer (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

Subpart C—Per Diem Payments

§ 51.40 Monthly payment.

(a)(1) During Fiscal Year 1999, VA will pay monthly one-half of the cost of each eligible veteran's nursing home care for each day the veteran is in a facility recognized as a State home for nursing home care, not to exceed $43.92 per diem.

(2) Per diem will be paid only for the days that the veteran is a resident at the facility. For purposes of paying per diem, VA will consider a veteran to be a resident at the facility during each full day that the veteran is receiving care at the facility. VA will not deem the veteran to be a resident at the facility if the veteran is receiving care outside the State home facility at VA expense. Otherwise, VA will deem the veteran to be a resident at the facility during any absence from the facility that lasts for no more than 96 consecutive hours. This absence will be considered to have ended when the veteran returns as a resident if the veteran's stay is for at least a continuous 24-hour period.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA form 10–5588, State Home Report and Statement of Federal Aid Claimed. This form is set forth in full at § 51.221 of this part.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms 10–10EZ, Application for Medical Benefits, and 10–10SH, State Home Program Application for Care—Medical Certification, at the time of admission and with any request for a change in the level of care (domiciliary care or hospital care). These forms are set forth in full at § 51.222 and § 51.223, respectively, of this part. If the facility is eligible to receive per diem payments for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the veteran was admitted to the facility if the completed forms are received within 10 days after admission.

(b) Total per diem costs for an eligible veteran's nursing home care consist of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of patients at the nursing home. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments.''

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the

veteran needs nursing home care and the veteran is within one of the following categories:

(a) Veterans with service-connected disabilities;

(b) Veterans who are former prisoners of war;

(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(d) Veterans who receive disability compensation under 38 U.S.C. 1151;

(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);

(h) Veterans of the Mexican border period or of World War I;

(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C. 1710(e);

(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), if they seek VA hospital, nursing home, or outpatient care.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

Subpart D—Standards

§ 51.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and facility management must meet for the State to receive per diem for nursing home care.

§ 51.70 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The facility management must protect and promote the rights of each resident, including each of the following rights:

(a) *Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility management in exercising his or her rights.

(3) The resident has the right to freedom from chemical or physical restraint.

(4) In the case of a resident determined incompetent under the laws of a State by a court of jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(5) In the case of a resident who has not been determined incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

(b) *Notice of rights and services.* (1) The facility management must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and periodically during the resident's stay.

(2) The resident or his or her legal representative has the right—

(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of his or her records for review, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and with 2 working days advance notice to the facility management.

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status;

(4) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (b)(7) of this section; and

(5) The facility management must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services to be billed to the resident.

(6) The facility management must furnish a written description of legal rights which includes—

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A statement that the resident may file a complaint with the State (agency) concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.

(7) The facility management must have written policies and procedures regarding advance directives (e.g., living wills). These requirements include provisions to inform and provide written information to all residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law. If an individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating conditions) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility management is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(8) The facility management must inform each resident of the name and way of contacting the primary physician responsible for his or her care.

(9) Notification of changes. (i) Facility management must immediately inform the resident; consult with the primary physician; and if known, notify the resident's legal representative or an interested family member when there is—

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 51.80(a) of this part.

(ii) The facility management must also promptly notify the resident and, if known, the resident's legal

representative or interested family member when there is—

(A) A change in room or roommate assignment as specified in § 51.100(f)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The facility management must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) *Protection of resident funds.* (1) The resident has the right to manage his or her financial affairs, and the facility management may not require residents to deposit their personal funds with the facility.

(2) Management of personal funds. Upon written authorization of a resident, the facility management must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)–(6) of this section.

(3) Deposit of funds. (i) Funds in excess of $50. The facility management must deposit any residents' personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(ii) Funds less than $50. The facility management must maintain a resident's personal funds that do not exceed $50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(4) Accounting and records. The facility management must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.

(5) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility management must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(6) Assurance of financial security. The facility management must purchase a surety bond, or otherwise provide assurance satisfactory to the Under Secretary for Health, to assure the security of all personal funds of residents deposited with the facility.

(d) *Free choice.* The resident has the right to—

(1) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(2) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *Privacy and confidentiality.* The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Residents have a right to personal privacy in their accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility management to give a private room to each resident.

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when—

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(f) *Grievances.* A resident has the right to—

(1) Voice grievances without discrimination or reprisal. Residents may voice grievances with respect to treatment received and not received; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) *Examination of survey results.* A resident has the right to—

(1) Examine the results of the most recent VA survey with respect to the facility. The facility management must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(h) *Work.* The resident has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) *Mail.* The resident has the right to privacy in written communications, including the right to—

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationery, postage, and writing implements at the resident's own expense.

(j) *Access and visitation rights.* (1) The resident has the right and the facility management must provide immediate access to any resident by the following:

(i) Any representative of the Under Secretary for Health;

(ii) Any representative of the State;

(iii) Physicians of the resident's choice;

(iv) The State long term care ombudsman;

(v) Immediate family or other relatives of the resident subject to the resident's right to deny or withdraw consent at any time; and

(vi) Others who are visiting subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(2) The facility management must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility management must allow representatives of the State Ombudsman Program, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, subject to State law.

(k) *Telephone.* The resident has the right to reasonable access to use a telephone where calls can be made without being overheard.

(l) *Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(m) *Married couples.* The resident has the right to share a room with his or her

spouse when married residents live in the same facility and both spouses consent to the arrangement.

(n) *Self-Administration of drugs.* An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 51.110(d)(2)(ii) of this part, has determined that this practice is safe.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.80 Admission, transfer and discharge rights.

(a) *Transfer and discharge*—(1) *Definition.* Transfer and discharge includes movement of a resident to a bed outside of the facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same facility.

(2) *Transfer and discharge requirements.* The facility management must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice to pay for a stay at the facility; or

(vi) The nursing home ceases to operate.

(3) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section, the primary physician must document in the resident's clinical record.

(4) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) *Timing of the notice.* (i) The notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged, except when specified in paragraph (a)(5)(ii) of this section,

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered;

(B) The health of individuals in the facility would be otherwise endangered;

(C) The resident's health improves sufficiently so the resident no longer needs the services provided by the nursing home;

(D) The resident's needs cannot be met in the nursing home;

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State official designated by the State; and

(v) The name, address and telephone number of the State long term care ombudsman.

(7) *Orientation for transfer or discharge.* A facility management must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(b) *Notice of bed-hold policy and readmission.*—(1) *Notice before transfer.* Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility management must provide written information to the resident and a family member or legal representative that specifies—

(i) The duration of the facility's bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility; and

(ii) The facility's policies regarding bed-hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.

(2) *Bed-hold notice upon transfer.* At the time of transfer of a resident for hospitalization or therapeutic leave, facility management must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b)(1) of this section.

(3) *Permitting resident to return to facility.* A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility immediately upon the first availability of a bed in a semi-private room, if the resident requires the services provided by the facility.

(c) *Equal access to quality care.* The facility management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) *Admissions policy.* The facility management must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract to pay the facility from the resident's income or resources.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.90 Resident behavior and facility practices.

(a) *Restraints.* (1) The resident has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body. Bed rails and vest restraints are examples of physical restraints.

(2) The facility management uses a system to achieve a restraint-free environment.

(3) The facility management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.

(b) *Abuse.* The resident has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(1) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(2) Physical abuse includes hitting, slapping, pinching, or kicking. Also includes controlling behavior through corporal punishment.

(3) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(4) Neglect is any impaired quality of life for an individual because of the absence of minimal services or

resources to meet basic needs. Includes withholding or inadequately providing food and hydration (without physician, resident, or surrogate approval), clothing, medical care, and good hygiene. May also include placing the individual in unsafe or unsupervised conditions.

(5) Involuntary seclusion is a resident's separation from other residents or from the resident's room against his or her will or the will of his or her legal representative.

(c) *Staff treatment of residents.* The facility management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

The facility management must:

(i) Not employ individuals who —

(A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and

(ii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.

(2) The facility management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures.

(3) The facility management must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or the designated representative and to other officials in accordance with State law within 5 working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.100 Quality of life.

A facility management must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) *Dignity.* The facility management must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The resident has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the facility; and

(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(c) *Resident Council.* The facility management must establish a council of residents that meet at least quarterly. The facility management must document any concerns submitted to the management of the facility by the council.

(d) *Participation in resident and family groups.* (1) A resident has the right to organize and participate in resident groups in the facility;

(2) A resident's family has the right to meet in the facility with the families of other residents in the facility;

(3) The facility management must provide the council and any resident or family group that exists with private space;

(4) Staff or visitors may attend meetings at the group's invitation;

(5) The facility management must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(6) The facility management must listen to the views of any resident or family group, including the council established under paragraph (c) of this section, and act upon the concerns of residents, families, and the council regarding policy and operational decisions affecting resident care and life in the facility.

(e) *Participation in other activities.* A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. The facility management must arrange for religious counseling by clergy of various faith groups.

(f) *Accommodation of needs.* A resident has the right to—

(1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(2) Receive notice before the resident's room or roommate in the facility is changed.

(g) *Patient Activities.* (1) The facility management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.

(2) The activities program must be directed by a qualified professional who—

(i) Is a qualified therapeutic recreation specialist or an activities professional who—

(A) Is licensed or registered, if applicable, by the State in which practicing; and

(B) Is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body.

(h) *Social Services.* (1) The facility management must provide medically related social services to attain or maintain the highest practicable mental and psychosocial well being of each resident.

(2) A nursing home with 100 or more beds must employ a qualified social worker on a full-time basis.

(3) Qualifications of social worker. A qualified social worker is an individual with—

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education, and

Note: A master's degree social worker with experience in long-term care is preferred.

(ii) A social work license from the State in which the State home is located, if offered by the State, and

(iii) A minimum of one year of supervised social work experience, under the supervision of a social worker with a master's degree, in a health care setting working directly with individuals.

(4) The facility management must have sufficient support staff to meet patients' social services needs.

(5) Facilities for social services must ensure privacy for interviews.

(i) *Environment.* The facility management must provide—

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Clean bed and bath linens that are in good condition;

(4) Private closet space in each resident room, as specified in § 51.200(d)(2)(iv) of this part;

(5) Adequate and comfortable lighting levels in all areas;

(6) Comfortable and safe temperature levels. Facilities must maintain a temperature range of 71–81 degrees F.; and

(7) For the maintenance of comfortable sound levels.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.110 Resident assessment.

The facility management must conduct initially, annually and as required by a change in the resident's condition a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(a) *Admission orders.* At the time each resident is admitted, the facility management must have physician orders for the resident's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the resident's condition, not to exceed 72 hours after admission, except when an examination was performed within five days before admission and the findings were recorded in the medical record on admission.

(b) *Comprehensive assessments.* (1) The facility management must make a comprehensive assessment of a resident's needs:

(i) Using the Health Care Financing Administration Long Term Care Resident Assessment Instrument Version 2.0; and

(ii) Describing the resident's capability to perform daily life functions, strengths, performances, needs as well as significant impairments in functional capacity.

(iii) All nursing homes must be in compliance with this standard by no later than January 1, 2000.

(2) Frequency. Assessments must be conducted—

(i) No later than 14 days after the date of admission;

(ii) Promptly after a significant change in the resident's physical, mental, or social condition; and

(iii) In no case less often than once every 12 months.

(3) Review of assessments. The nursing facility management must examine each resident no less than once every 3 months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(4) Use. The results of the assessment are used to develop, review, and revise the resident's individualized comprehensive plan of care, under paragraph (d) of this section.

(c) *Accuracy of assessments.* (1) Coordination—

(i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse that signs and certifies the completion of the assessment.

(2) Certification. Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(d) *Comprehensive care plans.* (1) The facility management must develop an individualized comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following—

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under § 51.120; and

(ii) Any services that would otherwise be required under § 51.120 of this part but are not provided due to the resident's exercise of rights under § 51.70, including the right to refuse treatment under § 51.70(b)(4) of this part.

(2) A comprehensive care plan must be—

(i) Developed within 7 calendar days after completion of the comprehensive assessment;

(ii) Prepared by an interdisciplinary team, that includes the primary physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, the participation of the resident, the resident's family or the resident's legal representative; and

(iii) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each resident's written plan of care.

(e) *Discharge summary.* Prior to discharging a resident, the facility management must prepare a discharge summary that includes—

(1) A recapitulation of the resident's stay;

(2) A summary of the resident's status at the time of the discharge to include items in paragraph (b)(2) of this section; and

(3) A post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.120 Quality of care.

Each resident must receive and the facility management must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Reporting of Sentinel Events.* (1) Definition. A sentinel event is an adverse event that results in the loss of life or limb or permanent loss of function.

(2) Examples of sentinel events are as follows:

(i) Any resident death, paralysis, coma or other major permanent loss of function associated with a medication error; or

(ii) Any suicide of a resident, including suicides following elopement (unauthorized departure) from the facility; or

(iii) Any elopement of a resident from the facility resulting in a death or a major permanent loss of function; or

(iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or

(v) Assault, homicide or other crime resulting in patient death or major permanent loss of function; or

(vi) A patient fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall.

(3) The facility management must report sentinel events to the director of VA medical center of jurisdiction, VA Network Director (10N 1–22), Chief Network Officer (10N), and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) within 24 hours of identification.

(4) The facility management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event.

(i) Goal. The purpose of the review and analysis of a sentinel event is to prevent injuries to residents, visitors, and personnel, and to manage those injuries that do occur and to minimize

the negative consequences to the injured individuals and facility.

(b) *Activities of daily living.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to—

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Talk or otherwise communicate.

(2) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section; and

(3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) *Vision and hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident—

(1) In making appointments, and

(2) By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) *Pressure sores.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(e) *Urinary and Fecal Incontinence.* Based on the resident's comprehensive assessment, the facility management must ensure that—

(1) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(2) A resident who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(3) A resident who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) *Range of motion.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A resident with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) *Mental and Psychosocial functioning.* Based on the comprehensive assessment of a resident, the facility management must ensure that a resident who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) *Enteral Feedings.* Based on the comprehensive assessment of a resident, the facility management must ensure that—

(1) A resident who has been able to adequately eat or take fluids alone or with assistance is not fed by enteral feedings unless the resident's clinical condition demonstrates that use of enteral feedings was unavoidable; and

(2) A resident who is fed by enteral feedings receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, nasal-pharyngeal ulcers and other skin breakdowns, and to restore, if possible, normal eating skills.

(i) *Accidents.* The facility management must ensure that—

(1) The resident environment remains as free of accident hazards as is possible; and

(2) Each resident receives adequate supervision and assistance devices to prevent accidents.

(j) *Nutrition.* Based on a resident's comprehensive assessment, the facility management must ensure that a resident—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(k) *Hydration.* The facility management must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(l) *Special needs.* The facility management must ensure that residents receive proper treatment and care for the following special services:

(1) Injections;

(2) Parenteral and enteral fluids;

(3) Colostomy, ureterostomy, or ileostomy care;

(4) Tracheostomy care;

(5) Tracheal suctioning;

(6) Respiratory care;

(7) Foot care; and

(8) Prostheses.

(m) *Unnecessary drugs*—(1) *General.* Each resident's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or

(ii) For excessive duration; or

(iii) Without adequate monitoring; or

(iv) Without adequate indications for its use; or

(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(vi) Any combinations of the reasons above.

(2) *Antipsychotic Drugs.* Based on a comprehensive assessment of a resident, the facility management must ensure that—

(i) Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(ii) Residents who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(n) *Medication Errors.* The facility management must ensure that—

(1) Medication errors are identified and reviewed on a timely basis; and

(2) strategies for preventing medication errors and adverse reactions are implemented.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.130 Nursing services.

The facility management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by resident assessment and individualized comprehensive plans of care, of all patients within the facility 24 hours a day, 7 days a week.

(a) The nursing service must be under the direction of a full-time registered nurse who is currently licensed by the State and has, in writing, administrative authority, responsibility, and

accountability for the functions, activities, and training of the nursing services staff.

(b) The facility management must provide registered nurses 24 hours per day, 7 days per week.

(c) The director of nursing service must designate a registered nurse as a supervising nurse for each tour of duty.

(1) Based on the application and results of the case mix and staffing methodology, the director of nursing may serve in a dual role as director and as an onsite-supervising nurse only when the facility has an average daily occupancy of 60 or fewer residents in nursing home.

(2) Based on the application and results of the case mix and staffing methodology, the evening or night supervising nurse may serve in a dual role as supervising nurse as well as provides direct patient care only when the facility has an average daily occupancy of 60 or fewer residents in nursing home.

(d) The facility management must provide nursing services to ensure that there is a minimum direct care nurse staffing per patient per 24 hours, 7 days per week of no less than 2.5 hours.

(e) Nurse staffing must be based on a staffing methodology that applies case mix and is adequate for meeting the standards of this part.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.140 Dietary services.

The facility management must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(a) *Staffing.* The facility management must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(1) If a qualified dietitian is not employed full-time, the facility management must designate a person to serve as the director of food service who receives at least a monthly scheduled consultation from a qualified dietitian.

(2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.

(b) *Sufficient staff.* The facility management must employ sufficient support personnel competent to carry out the functions of the dietary service.

(c) *Menus and nutritional adequacy.* Menus must—

(1) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(2) Be prepared in advance; and

(3) Be followed.

(d) *Food.* Each resident receives and the facility provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to residents who refuse food served.

(e) *Therapeutic diets.* Therapeutic diets must be prescribed by the primary care physician.

(f) *Frequency of meals.* (1) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(2) There must be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in paragraph (f)(4) of this section.

(3) The facility staff must offer snacks at bedtime daily.

(4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span, and a nourishing snack is served.

(g) *Assistive devices.* The facility management must provide special eating equipment and utensils for residents who need them.

(h) *Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.150 Physician services.

A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician.

(a) *Physician supervision.* The facility management must ensure that—

(1) The medical care of each resident is supervised by a primary care physician;

(2) Each resident's medical record must list the name of the resident's primary physician, and

(3) Another physician supervises the medical care of residents when their primary physician is unavailable.

(b) *Physician visits.* The physician must—

(1) Review the resident's total program of care, including medications and treatments, at each visit required by paragraph (c) of this section;

(2) Write, sign, and date progress notes at each visit; and

(3) Sign and date all orders.

(c) *Frequency of physician visits.*

(1) The resident must be seen by the primary physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter, or more frequently based on the condition of the resident.

(2) A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required.

(3) Except as provided in paragraphs (c)(4) of this section, all required physician visits must be made by the physician personally.

(4) At the option of the physician, required visits in the facility after the initial visit may alternate between personal visits by the physician and visits by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(d) *Availability of physicians for emergency care.* The facility management must provide or arrange for the provision of physician services 24 hours a day 7 days per week, in case of an emergency.

(e) *Physician delegation of tasks.* (1) Except as specified in paragraph (e)(2) of this section, a primary physician may delegate tasks to:

(i) a certified physician assistant or a certified nurse practitioner, or

(ii) a clinical nurse specialist who—

(A) Is acting within the scope of practice as defined by State law; and

(B) Is under the supervision of the physician.

Note: A certified clinical nurse specialist with experience in long term care is preferred.

(2) The primary physician may not delegate a task when the regulations specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.160 Specialized rehabilitative services.

(a) Provision of services: If specialized rehabilitative services such as but not limited to physical therapy, speech

therapy, occupational therapy, and mental health services for mental illness are required in the resident's comprehensive plan of care, facility management must—

(1) Provide the required services; or

(2) Obtain the required services from an outside resource, in accordance with § 51.210(h) of this part, from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.170 Dental services.

A facility—

(a) Must provide or obtain from an outside resource, in accordance with § 51.210(h) of this part, routine and emergency dental services to meet the needs of each resident;

(b) May charge a resident an additional amount for routine and emergency dental services;

(c) Must, if necessary, assist the resident—

(1) In making appointments; and

(2) By arranging for transportation to and from the dental services; and

(3) Promptly refer residents with lost or damaged dentures to a dentist.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.180 Pharmacy services.

The facility management must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in § 51.210(h) of this part. The facility management must have a system for disseminating drug information to medical and nursing staff.

(a) *Procedures.* The facility management must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(b) *Service consultation.* The facility management must employ or obtain the services of a pharmacist licensed in a State in which the facility is located who—

(1) Provides consultation on all aspects of the provision of pharmacy services in the facility;

(2) Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

(3) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(c) *Drug regimen review.* (1) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(2) The pharmacist must report any irregularities to the primary physician and the director of nursing, and these reports must be acted upon.

(d) *Labeling of drugs and biologicals.* Drugs and biologicals used in the facility management must be labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date when applicable.

(e) *Storage of drugs and biologicals.* (1) In accordance with State and Federal laws, the facility management must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(2) The facility management must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.190 Infection control.

The facility management must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(a) *Infection control program.* The facility management must establish an infection control program under which it—

(1) Investigates, controls, and prevents infections in the facility;

(2) Decides what procedures, such as isolation, should be applied to an individual resident; and

(3) Maintains a record of incidents and corrective actions related to infections.

(b) *Preventing spread of infection.* (1) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility management must isolate the resident.

(2) The facility management must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(3) The facility management must require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice.

(c) *Linens.* Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.200 Physical environment.

The facility management must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public.

(a) *Life safety from fire.* The facility must meet the applicable provisions of the 1997 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference). Incorporation of the 1997 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1997; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 that govern the use of incorporations by reference.[1]

(b) *Emergency power.* (1) An emergency electrical power system must be provided to supply power adequate for illumination of all exit signs and lighting for the means of egress, fire alarm and medical gas alarms, emergency communication systems, and generator task illumination.

(2) The system must be the appropriate type essential electrical system in accordance with the requirements of NFPA 99, Health Care Facilities.

(3) When electrical life support devices are used, an emergency electrical power system must also be provided for devices in accordance with NFPA 99, Health Care Facilities.

(4) The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources per NFPA 99, Health Care Facilities.

(c) *Space and equipment.* Facility management must—

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

[1] The Code is available for inspection at the Office of the Federal Register Information Center, room 8301, 1110 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02200. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Resident rooms.* Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents (1) Bedrooms must—

(i) Accommodate no more than four residents;

(ii) Measure at least 115 net square feet per resident in multiple resident bedrooms;

(iii) Measure at least 150 net square feet in single resident bedrooms;

(iv) Measure at least 245 net square feet in small double resident bedrooms; and

(v) Measure at least 305 net square feet in large double resident bedrooms used for spinal cord injury residents. It is recommended that the facility have one large double resident bedroom for every 30 resident bedrooms.

(vi) Have direct access to an exit corridor;

(vii) Be designed or equipped to assure full visual privacy for each resident;

(viii) Except in private rooms, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;

(ix) Have at least one window to the outside; and

(x) Have a floor at or above grade level.

(2) The facility management must provide each resident with—

(i) A separate bed of proper size and height for the safety of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(e) *Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities. It is recommended that public toilet facilities be also located near the resident's dining and recreational areas.

(f) *Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) *Dining and resident activities.* The facility management must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(2) Be well ventilated;

(3) Be adequately furnished; and

(4) Have sufficient space to accommodate all activities.

(h) *Other environmental conditions.* The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must—

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

(3) Equip corridors with firmly secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.210 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident.

(a) *Governing body.* (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body or State official with oversight for the facility appoints the administrator who is—

(i) Licensed by the State where licensing is required; and

(ii) Responsible for operation and management of the facility.

(b) *Disclosure of State agency and individual responsible for oversight of facility.* The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Headquarters, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;

(2) The State home administrator;

(3) The State home director of nursing; or

(4) The State employee responsible for oversight of the State home facility if a contractor operates the State home.

(c) *Required Information.* The facility management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current:

(1) The copy of legal and administrative action establishing the State-operated facility (e.g., State laws);

(2) Site plan of facility and surroundings.

(3) Legal title, lease, or other document establishing right to occupy facility;

(4) Organizational charts and the operational plan of the facility;

(5) The number of the staff by category indicating full-time, part-time and minority designation;

(6) The number of nursing home patients who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities;

(7) Annual State Fire Marshall's report;

(8) Annual certification from the responsible State Agency showing compliance with Section 504 of the Rehabilitation Act of 1973 (Public Law 93–112) (VA Form 10–0143A set forth at § 51.224);

(9) Annual certification for Drug-Free Workplace Act of 1988 (VA Form 10–0143 set forth at § 51.225);

(10) Annual certification regarding lobbying in compliance with Public Law 101–121 (VA Form 10–0144 set forth at § 51.226);

(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 as incorporated in Title 38 CFR 18.1–18.3 (VA Form 27–10–0144A located at § 51.227);

(d) *Percentage of Veterans.* The percent of the facility residents eligible for VA nursing home care must be at least 75 percent veterans except that the veteran percentage need only be more than 50 percent if the facility was constructed or renovated solely with State funds. All non-veteran residents must be spouses of veterans or parents all of whose children died while serving in the armed forces of the United States.

(e) *Management Contract Facility.* If a facility is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time onsite basis.

(f) *Licensure.* The facility and facility management must comply with applicable State and local licensure laws.

(g) *Staff qualifications.* (1) The facility management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility management must have that service furnished to residents by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the facility management assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(i) *Medical director.* (1) The facility management must designate a primary care physician to serve as medical director.

(2) The medical director is responsible for—

(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;

(ii) Directing and coordinating medical care in the facility;

(iii) Helping to arrange for continuous physician coverage to handle medical emergencies;

(iv) Reviewing the credentialing and privileging process;

(v) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the administrator; and

(vi) Monitoring employees' health status and advising the administrator on employee-health policies.

(j) *Credentialing and privileging.* Credentialing is the process of obtaining, verifying, and assessing the qualifications of a health care practitioner, which may include physicians, podiatrists, dentists, psychologists, physician assistants, nurse practitioners, licensed nurses to provide patient care services in or for a health care organization. Privileging is the process whereby a specific scope and content of patient care services are authorized for a health care practitioner by the facility management, based on evaluation of the individual's credentials and performance.

(1) The facility management must uniformly apply credentialing criteria to licensed independent practitioners applying to provide resident care or treatment under the facility's care.

(2) The facility management must verify and uniformly apply the following core criteria: Current licensure; current certification, if applicable, relevant education, training, and experience; current competence; and a statement that the individual is able to perform the services he or she is applying to provide.

(3) The facility management must decide whether to authorize the independent practitioner to provide resident care or treatment, and each credentials file must indicate that these criteria are uniformly and individually applied.

(4) The facility management must maintain documentation of current credentials for each licensed independent practitioner practicing within the facility.

(5) When reappointing a licensed independent practitioner, the facility management must review the individual's track record.

(6) The facility management systematically must assess whether individuals with clinical privileges act within the scope of privileges granted.

(k) *Required training of nursing aides.* (1) Nurse aide means any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or a volunteer who provide such services without pay.

(2) The facility management must not use any individual working in the facility as a nurse aide whether permanent or not unless:

(i) That individual is competent to provide nursing and nursing related services; and

(ii) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State.

(3) Registry verification. Before allowing an individual to serve as a nurse aide, facility management must receive registry verification that the individual has met competency evaluation requirements unless the individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide, facility management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes will include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(6) Regular in-service education. The facility management must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and

(iii) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(l) *Proficiency of nurse aides.* The facility management must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(m) *Level B Requirement Laboratory services.* (1) The facility management must provide or obtain laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet all applicable certification standards, statutes, and regulations for laboratory services.

(ii) If the facility provides blood bank and transfusion services, it must meet all applicable certification standards, statutes, and regulations.

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of services and meet certification standards, statutes, and regulations.

(iv) The laboratory performing the testing must have a current, valid CLIA number (Clinical Laboratory Improvement Amendments of 1988). The facility management must provide VA surveyors with the CLIA number and a copy of the results of the last CLIA inspection.

(v) Such services must be available to the resident seven days a week, 24 hours a day.

(2) The facility management must—

(i) Provide or obtain laboratory services only when ordered by the primary physician;

(ii) Promptly notify the primary physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record laboratory reports that are dated and contain the name and address of the testing laboratory.

(n) *Radiology and other diagnostic services.* (1) The facility management must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet all applicable certification standards, statutes, and regulations.

(ii) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services. The services must meet all applicable certification standards, statutes, and regulations.

(iii) Radiologic and other diagnostic services must be available 24 hours a day, seven days a week.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the primary physician;

(ii) Promptly notify the primary physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(o) *Clinical records.* (1) The facility management must maintain clinical records on each resident in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge when there is no requirement in State law.

(3) The facility management must safeguard clinical record information against loss, destruction, or unauthorized use;

(4) The facility management must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract; or

(iv) The resident.

(5) The clinical record must contain—

(i) Sufficient information to identify the resident;

(ii) A record of the resident's assessments;

(iii) The plan of care and services provided;

(iv) The results of any pre-admission screening conducted by the State; and

(v) Progress notes.

(p) *Quality assessment and assurance.* (1) Facility management must maintain a quality assessment and assurance committee consisting of—

(i) The director of nursing services;

(ii) A primary physician designated by the facility; and

(iii) At least 3 other members of the facility's staff.

(2) The quality assessment and assurance committee—

(i) Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(ii) Develops and implements appropriate plans of action to correct identified quality deficiencies; and

(3) Identified quality deficiencies are corrected within an established time period.

(4) The VA Under Secretary for Health may not require disclosure of the records of such committee unless such disclosure is related to the compliance with requirements of this section.

(q) *Disaster and emergency preparedness.* (1) The facility management must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility management must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(r) *Transfer agreement.* (1) The facility management must have in effect a written transfer agreement with one or more hospitals that reasonably assures that—

(i) Residents will be transferred from the nursing home to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the primary physician; and

(ii) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the nursing home or the hospital, will be exchanged between the institutions.

(2) The facility is considered to have a transfer agreement in effect if the facility has an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(s) *Compliance with Federal, State, and local laws and professional standards.* The facility management must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. This includes the Single Audit Act of 1984 (Title 31, Section 7501 et. seq.) and the Cash Management Improvement Acts of 1990 and 1992 (Pub. L. 101–453 and 102–589, see 31 U.S.C. 3335, 3718, 3720A, 6501, 6503)

(t) *Relationship to other Federal regulations.* In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other Federal laws and regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, national origin, handicap, or age (38 CFR part 18); protection of human subjects of research (45 CFR part 46), section 504 of the Rehabilitation Act of 1993, Pub. L. 93–112; Drug-Free Workplace Act of 1988, 38 CFR part 44, §§ 44.100 through 44.420; section 319 of Pub. L. 101–121; Title VI of the Civil Rights Act of 1964, 38 CFR 18.1–18.3. Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(u) *Intermingling.* A building housing a facility recognized as a State home for providing nursing home care may only provide nursing home care in the areas of the building recognized as a State home for providing nursing home care.

(v) *VA Management of State Veterans Homes.* Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing nursing home care.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

BILLING CODE 8320–01–P

§ 51.220 VA Form 10–3567—State Home Inspection Staffing Profile

OMB Approved No. 2900-0160
Estimated Burden Avg. 20 min.

Department of Veterans Affairs

STATE HOME INSPECTION

NAME OF HOME	DATE OF INSPECTION

PART I	TOTAL FACILITY	HOSPITAL	NHC	DOM
OPERATING BEDS				
AUTHORIZED APPROVALS				
PATIENT CENSUS				
POSITIONS AUTHORIZED				
STAFF AVAILABLE				
PART II - STAFF	**TOTAL FACILITY**	**HOSPITAL**	**NHC**	**DOM**
PHYSICIANS:				
PHYSICIANS ASSISTANTS				
DENTISTS				
SOCIAL WORK: MSW				
BSW				
SOCIAL WORK ASSISTANT				
PHARMACY: REG. PHARMACIST				
DIETETICS: REG. DIETITIAN				
FOOD SUPERVISOR				
DIETARY ASSISTANTS				
NURSING:				
NURSING ADM./SUP.				
DIRECT CARE: CERT. N.P./C.N.S.				
R.N.				
L.P.N./L.V.N.				
N.A.				
REHABILITATION THERAPY				
REG. P.T./P.T. AIDES				
REG. O.T./O.T. AIDES				
MENTAL HEALTH: PSYCHOLOGIST				
PSYCHIATRIST				
PSYCHIATRIC SOCIAL WORKER				
COUNSELOR				
SPEECH AND AUDIOLOGY				
OPHTHALMOLOGY/OPTOMETRY				
PODIATRY				
RADIOLOGY/LABORATORY				
RECREATION/ACTIVITIES				
DIRECTOR				
ASSISTANTS				
VOLUNTEERS				
CHAPLAIN				
ADMINISTRATION				
ENGINEERING				
MAINTENANCE/HOUSEKEEPING				
MEDICAL RECORDS				
OTHER *(Specify)*				

VA FORM MAY 1998 (RS) 10-3567

SEE REVERSE

NAME OF HOME	DATE OF INSPECTION

NURSING SERVICE STAFFING PATTERN

(Four Week Average)

PART III HOSPITAL *(Average hours Hosp. _____)*

SHIFT	SUNDAY			MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY		
	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA
DAY																					
EVENING																					
NIGHT																					

PART IV NURSING HOME *(Average hours NHC _____)*

SHIFT	SUNDAY			MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY		
	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA
DAY																					
EVENING																					
NIGHT																					

PART V DOMICILIARY *(Average hours Dom. _____)*

SHIFT	SUNDAY			MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY		
	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA	RN	LPN	NA
DAY																					
EVENING																					
NIGHT																					

NAME OF HOME	DATE OF INSPECTION

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

§ 51.221 VA Form 10–5588-State Home Report and Statement of Federal Aid Claimed

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

Department of Veterans Affairs

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED

TO	VA FACILITY	FROM	NAME AND ADDRESS OF STATE HOME

PAY TO	FOR MONTH ENDING

LINE NO.	ITEM		DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
1	TOTAL VETERAN RESIDENTS REMAINING AT END OF PRIOR MONTH					
2	GAINS	ADMISSIONS *(Change of status)*				
3		ADMISSIONS *(Other)*				
4		RETURNS FROM LEAVE OF ABSENCE OF MORE THAN 96 HOURS				
5	LOSSES	DISCHARGES *(Change of status)*				
6		DISCHARGES *(Other)*				
7		DEATHS				
8		LEAVES OF ABSENCE OF MORE THAN 96 HOURS				
9	TOTAL VETERAN RESIDENTS REMAINING AT END OF THE MONTH					
10	TOTAL VETERAN DAYS OF CARE FURNISHED					
11	FEMALE VETERAN RESIDENTS REMAINING AT END OF THE MONTH					
12	NON-VETERAN RESIDENTS REMAINING AT END OF THE MONTH					

MONTHLY STATEMENT OF ACCOUNT

LINE NO.	FEDERAL AID CLAIMED UNDER SEC.1741, TITLE 38, U.S.C., AS AMENDED	DAYS OF CARE (J)	AVERAGE DAILY CENSUS (K)	TOTAL PER DIEM COST (L)	PER DIEM CLAIMED (M)	TOTAL AMOUNT CLAIMED (N)
13	DOMICILIARY CARE			$	$	$
14	NURSING HOME CARE			$	$	$
15	HOSPITAL CARE			$	$	$
16	ADULT DAY HEALTH CARE			$	$	$
17	TOTAL AMOUNT CLAIMED					$

FOR DEPARTMENT OF VETERANS AFFAIR USE ONLY

RECEIVING REPORT - Services authorized under provisions of Sec. 1741, 1742 and 1743, Title 38, U.S.C., have been rendered in the quantity claimed and payment is recommended except as follows:	SIGNATURE AND TITLE OF STATE HOME COORDINATOR	DATE
	ACCOUNTING CERTIFICATION - AUDIT BLOCK	
	AMOUNT DUE / DATE	VOUCHER AUDITOR

VA FORM JUL 1998 (RS) 10-5588

Department of Veterans Affairs

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED CONTINUED

I certify that this report is correct, that all residents included in the report were physically present during the period for which Federal aid is claimed, except for authorized absences of 96 hours or less, and that facility management has complied with all provisions of Title VI, Public Law 88-352, entitled Civil Rights Act of 1964.

TOTAL STATE OPERATING BEDS AT END OF THE MONTH

DOMICILIARY CARE	NURSING HOME CARE	HOSPITAL CARE	ADULT DAY HEALTH CARE

BED CAPACITY APPROVED BY VA

DOMICILIARY CARE	NURSING HOME CARE	HOSPITAL CARE	ADULT DAY HEALTH CARE

SIGNATURE OF STATE HOME ADMINISTRATOR	DATE

SIGNATURE OF STATE EMPLOYEE WHEN APPLICABLE	DATE

REMARKS

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

VA FORM JUL 1998 (RS) 10-5588 PAGE 2

§ 51.222 VA Form 10–10EZ-Application for Health Benefits

OMB Approved No. 2900-xxxx
Estimated Burden Avg. 20 min.

Department of Veterans Affairs

APPLICATION FOR HEALTH BENEFITS

SECTION I - GENERAL INFORMATION

1A. TYPE OF BENEFIT(S) APPLIED FOR *(You may check more than one)*
☐ HEALTH SERVICES ☐ NURSING HOME ☐ DOMICILIARY ☐ DENTAL

1B. IF APPLYING FOR HEALTH SERVICES, WHICH VA MEDICAL CENTER OR OUTPATIENT CLINIC DO YOU PREFER

2. VETERAN'S NAME *(Last, First, MI)*	3. OTHER NAMES USED	4. GENDER *(Check one)* ☐ M ☐ F

5. SOCIAL SECURITY NUMBER	6. CLAIM NUMBER	7. DATE OF BIRTH *(mm/dd/yyyy)*	8. RELIGION

9A. CURRENT MAILING ADDRESS *(Street)*	9B. CITY	9C. STATE	9D. ZIP

9E. COUNTY	10. HOME TELEPHONE NUMBER ( )	11. WORK TELEPHONE NUMBER ( )

12. CURRENT MARITAL STATUS *(Check one)*
☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED ☐ UNKNOWN

13A. LAST BRANCH OF SERVICE	13B. LAST ENTRY DATE	13C. LAST DISCHARGE DATE	13D. DISCHARGE TYPE	13E. MILITARY SERVICE NUMBER

14. CIRCLE YES OR NO

A. ARE YOU A FORMER PRISONER OF WAR	YES	NO	H. DO YOU HAVE A MILITARY DENTAL INJURY	YES	NO
B. DO YOU HAVE A VA SERVICE-CONNECTED RATING	YES	NO	I. DO YOU HAVE A SPINAL CORD INJURY	YES	NO
B1. IF YES, WHAT IS YOUR RATED PERCENTAGE		%	J. ARE YOU ELIGIBLE FOR MEDICAID	YES	NO
C. ARE YOU RECEIVING A VA PENSION	YES	NO	K. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A	YES	NO
D. ARE YOU RETIRED FROM THE MILITARY	YES	NO	K1. EFFECTIVE DATE		
D1. WAS YOUR RETIREMENT THE RESULT OF A DISABILITY	YES	NO	L. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART B	YES	NO
D2. WERE YOU REGULARLY RETIRED - (20+yrs.)	YES	NO	L1. EFFECTIVE DATE		
E. WERE YOU EXPOSED TO TOXINS IN THE GULF WAR	YES	NO	M. MEDICARE CLAIM NUMBER		
F. WERE YOU EXPOSED TO AGENT ORANGE	YES	NO	N. NAME EXACTLY AS IT APPEARS ON YOUR MEDICARE CARD		
G. WERE YOU EXPOSED TO RADIATION	YES	NO			

15A. VETERAN'S EMPLOYMENT STATUS *(check one)* ☐ NOT EMPLOYED ☐ EMPLOYED ☐ RETIRED — *If employed or retired, complete item 15B* — / / *Date of retirement*	15B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER
16A. SPOUSE'S EMPLOYMENT STATUS *(check one)* ☐ NOT EMPLOYED ☐ EMPLOYED ☐ RETIRED — *If employed or retired, complete item 16B* — / / *Date of retirement*	16B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER
17A. VETERAN'S HEALTH INSURANCE COMPANY	18A. SPOUSE'S HEALTH INSURANCE COMPANY
17B. NAME OF POLICY HOLDER	18B. NAME OF POLICY HOLDER
17C. POLICY NUMBER / 17D. GROUP CODE	18C. POLICY NUMBER / 18D. GROUP CODE

19A. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN	19B. NEXT OF KIN'S HOME TELEPHONE NUMBER ( )
	19C. NEXT OF KIN'S WORK TELEPHONE NUMBER ( )
20A. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT	20B. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER ( )
	20C. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER ( )

21. I DESIGNATE THE FOLLOWING INDIVIDUAL TO RECEIVE POSSESSION OF ALL MY PERSONAL PROPERTY LEFT ON PREMISES UNDER VA CONTROL AFTER MY DEPARTURE OR AT THE TIME OF MY DEATH. *(Check one)* ***(This does not constitute a will or transfer of title.)***
☐ EMERGENCY CONTACT ☐ NEXT OF KIN

22A. IS NEED FOR CARE DUE TO ON THE JOB INJURY *(Check one)* ☐ YES ☐ NO	22B. IS NEED FOR CARE DUE TO ACCIDENT *(Check one)* ☐ YES ☐ NO

APPLICATION FOR HEALTH BENEFITS, Continued	VETERAN'S NAME	SOCIAL SECURITY NUMBER

SECTION II - FINANCIAL ASSESSMENT

IIA - FINANCIAL DISCLOSURE

You are not required to provide the financial information in this Section. However, current law may require VA to consider your household financial situation to determine your eligibility for enrollment and/or cost-free care of your nonservice-connected (NSC) conditions. If you are 0% SC noncompensable or NSC (and are not an Ex-POW, WWI veteran or VA pensioner) and your annual household income (or combined income and net worth) exceeds the established threshold, you must agree to pay VA co-payments for care of your NSC conditions to be eligible for enrollment. See Section III - Consent and Signature.

☐ **YES,** I WILL PROVIDE SPECIFIC INCOME AND/OR ASSET INFORMATION TO HAVE ELIGIBILITY FOR CARE DETERMINED. *Complete all sections below that apply to you with last calendar year's information. Sign and date the application.*

☐ **NO,** I DO NOT WISH TO PROVIDE MY DETAILED FINANCIAL INFORMATION. *I understand I will be assigned the appropriate enrollment priority based on nondisclosure of my financial information. By checking NO and signing below, I am agreeing to pay the applicable VA co-payment. Sign and date the application.*

IIB - DEPENDENT INFORMATION *(Use a separate sheet for additional dependents)*

1A. SPOUSE'S NAME *(Last, First, MI)*	1B. CHILD'S NAME *(Last, First, MI)*	
2A. SPOUSE'S SOCIAL SECURITY NUMBER	2B. CHILD'S SOCIAL SECURITY NUMBER	3. CHILD'S DATE OF BIRTH *(mm/dd/yyyy)*
4A. SPOUSE'S ADDRESS AND TELEPHONE NUMBER *(Street, City, State, ZIP)*	4B. SPOUSE'S DATE OF BIRTH *(mm/dd/yyyy)*	
5A. SPOUSE'S MAIDEN NAME	5B. CHILD'S RELATIONSHIP TO YOU *(Circle one)* *Son Daughter Stepson Stepdaughter*	
6A. DATE OF MARRIAGE *(mm/dd/yyyy)*	6B. DATE CHILD BECAME YOUR DEPENDENT *(mm/dd/yyyy)*	
7. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR, ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT SPOUSE $ CHILD $	8. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING *(tuition, books, materials, etc.)* $	
9. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18? ☐ YES ☐ NO	10. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR? ☐ YES ☐ NO	

IIC - GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN

	VETERAN	SPOUSE	CHILDREN
1. WHAT WAS YOUR GROSS ANNUAL INCOME FROM EMPLOYMENT *(wages, bonuses, tips, etc.)*, AS WELL AS INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	$	$	$
2. LIST OTHER INCOME AMOUNTS *(Social Security, compensation, pension, interest, dividends) Exclude welfare.*	$	$	$
3. WAS INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS *(If yes, refer to page 2, Section IIC of the instructions.)* ☐ YES ☐ NO			

IID - DEDUCTIBLE EXPENSES

1. NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE *(payments for doctors, dentists, drugs, Medicare, health insurance, hospital and nursing home)*	$
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD *(Also enter spouse or child's information in Section IIB)*	$
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES *(tuition, books, fees, materials, etc.) DO NOT LIST YOUR DEPENDENTS' EDUCATIONAL EXPENSES.*	$

IIE - NET WORTH

	VETERAN	SPOUSE
1. CASH, AMOUNT IN BANK ACCOUNTS *(Checking and savings accounts, certificates of deposit, individual retirement accounts, etc.)*	$	$
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. *Do not count your primary home. Include value of farm, ranch, or business assets.*	$	$
3. STOCKS AND BONDS AND VALUE OF OTHER PROPERTY OR ASSETS *(art, rare coins, etc.)* MINUS THE AMOUNT YOU OWE ON THESE ITEMS. *Exclude household effects and family vehicles.*	$	$

SECTION III - CONSENT AND SIGNATURE

CO-PAYMENT NOTICE: If you are a 0% service-connected noncompensable or a nonservice-connected veteran (and are not an Ex-POW, WWI veteran or VA pensioner) **and** your household income (or combined income and net worth) exceeds the established threshold, you may be eligible for enrollment only if you agree to pay VA co-payments for treatment of your NSC conditions. By signing this application you are agreeing to pay the applicable VA co-payment if required by law.

I CERTIFY THE FOREGOING STATEMENT(S) ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND ABILITY.	DATE *(mm/dd/yyyy)*
SIGN HERE *(Signature of applicant or applicant's representative)*	

THE LAW PROVIDES SEVERE PENALTIES FOR WILLFUL SUBMISSION OF FALSE INFORMATION.

§ 51.223 VA Form 10–10SH-State Home Program Application for Veteran Care Medical Certification

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

Department of Veterans Affairs

STATE HOME PROGRAM APPLICATION FOR VETERAN CARE MEDICAL CERTIFICATION

PART I - ADMINISTRATIVE

STATE HOME FACILITY	DATE ADMITTED	GENDER ☐ M ☐ F
RESIDENT'S NAME (*Last, First, Middle*)	SOCIAL SECURITY NUMBER	
RESIDENT'S STREET ADDRESS	AGE	DATE OF BIRTH
CITY, STATE AND ZIP CODE	ADVANCED MEDICAL DIRECTIVE ☐ NO ☐ YES	

PART II - HISTORY AND PHYSICAL *(Use separate sheet if necessary)*

HISTORY

HEIGHT	WEIGHT	TEMP	PULSE	BP	HEAD/EYES/EAR/NOSE AND THROAT

NECK	CARDIOPULMONARY
ABDOMEN	GENITOURINARY
RECTAL	EXTREMITIES
NEUROLOGICAL	ALLERGY/DRUG SENSITIVITY

X-RAY/ LAB						
	CHEST X-RAY	DATE:	RESULTS	CBC	DATE:	RESULTS
	SEROLOGY					
	URINALYSIS	DATE	ALBUMEN	SUGAR	ACETONE	

CHECK ALL BOXES THAT APPLY OR CIRCLE NA

IS DEMENTIA THE PRIMARY DIAGNOSIS	IS THERE A DIAGNOSIS OF MENTAL ILLNESS	HAS RESIDENT RECEIVED MENTAL SERVICES WITHIN THE PAST 2 YEARS	IS CLIENT A DANGER TO SELF OR OTHERS
☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO

IS THERE ANY PRESSING EVIDENCE OF MENTAL ILLNESS SUCH AS:

☐ SCHIZOPHRENIA ☐ PARANOIA ☐ OTHER PSYCHOTIC OR MENTAL DISORDERS LEADING TO CHRONIC DISABILITY
☐ MOOD SWINGS ☐ SOMATOFORM DISORDER ☐ PANIC OR SEVERE ANXIETY DISORDER ☐ PERSONALITY DISORDER

OXYGEN				FOLEY CATHETER
☐ MASK	☐ PRN	☐ TUBE FEEDING	☐ DECUBITUS ULCERS	☐ TEMPORARY
☐ NASAL CANULAR	☐ CONTINUOUS	☐ OSTOMY	☐ DRAINING WOUND	☐ PERMANENT
		☐ TRACHOSTOMY	☐ WOUND CULTURED	

REFERRING PHYSICIAN	PRIMARY DIAGNOSIS
SECONDARY DIAGNOSIS	TERTIARY DIAGNOSIS

TYPE OF CARE RECOMMENDED: ☐ SKILLED NURSING HOME CARE ☐ DOMICILIARY CARE ☐ ADULT DAY HEALTH CARE ☐ HOSPITAL

MEDICATION AND TREATMENT ORDERS ON ADMISSION, CONTINUE ON SEPARATE SHEET IF NECESSARY

PRINTED OR TYPED NAME OF PRIMARY PHYSICIAN ASSIGNED	SIGNATURE OF PRIMARY PHYSICIAN ASSIGNED

VA FORM JUL 1998 **10-10SH** PAGE 1

STATE HOME PROGRAM APPLICATION FOR VETERAN CARE - MEDICAL CERTIFICATION, CONTINUED

RESIDENT'S NAME (*Last, First, Middle*)	SOCIAL SECURITY NUMBER

EVALUATION (Circle appropriate number in each category)

COMMUNICATION	1. Transmits messages/receives information 2. Limited ability 3. Nearly or totally unable	**SPEECH**	1. Speaks clearly with others of same language 2. Limited ability 3. Unable to speak clearly or not at all
HEARING	1. Good 2. Hearing slightly impaired. 3. Limited hearing (e.g.- must speak loudly) 4. Virtually/completely deaf	**SIGHT**	1. Good 2. Vision adequate - Unable to read/see details 3. Vision limited - Gross object differentiation 4. Blind
TRANSFER	1. No assistance 2. Equipment only 3. Supervision only 4. Requires human transfer w/wo equipment 5. Bedfast	**AMBULATION**	1. Independence w/wo assistive device 2. Walks with supervision 3. Walks with continuous human support 4. Bed to chair (total help) 5. Bedfast
ENDURANCE	1. Tolerates distances (250 feet sustained activity) 2. Needs intermittent rest 3. Rarely tolerates short activities 4. No tolerance	**MENTAL AND BEHAVIOR STATUS**	1. Alert 2. Confused 3. Disoriented 4. Comatose 5. Agreeable 6. Disruptive 7. Apathetic 8. Well motivated
TIOLETING	1. No assistance 2. Assistance to and from and transfer 3. Total assistance including personal hygiene, help with clothes A. Bathroom B. Bedside commode C. Bedpan	**BATHING**	1. No assistance 2. Supervision only 3. Assistance 4. Is bathed A. Tub B. Shower C. Sponge bath
DRESSING	1. Dresses self 2. Minor assistance 3. Needs help to complete dressing 4. Has to be dressed	**FEEDING**	1. No assistance 2. Minor assistance, needs tray set up only 3. Help feeding/encouraging 4. Is fed
BLADDER CONTROL	1. Continent 2. Rarely incontinent 3. Occasional - once/week or less 4. Frequent - up to once a day 5. Total incontinence 6. Catheter, indwelling	**BOWEL CONTROL**	1. Continent 2. Rarely incontinent 3. Occasional - once/week or less 4. Frequent, - up to once a day 5. Total incontinence 6. Ostomy
SKIN CONDITION	1. Intact 2. Dry/Fragile 3. Irritations (Rash) 4. Open wound 5. Decubitus Number _____ Stage _____	**WHEEL CHAIR USE**	1. Independence 2. Assistance in difficult maneuvering 3. Wheels a few feet 4. Unable to use ☐ NA

SIGNATURE OF REGISTERED NURSE OR REFERRING PHYSICIAN	DATE

PHYSICAL THERAPY *(To be completed by Physical Therapist or Referring Physician* ☐ NEW REFERRAL ☐ CONTINUATION OF THERAPY

SENSATION IMPAIRED	RESTRICT ACTIVITY	PRECAUTIONS	FREQUENCY OF TREATMENT
☐ YES ☐ NO	☐ YES ☐ NO	☐ CARDIAC ☐ (OTHER *Specify*)	

TREATMENT GOALS:

☐ STRETCHING	☐ ACTIVE	☐ COORDINATING ACTIVITIES	☐ FULL WEIGHT BEARING	☐ WHEELCHAIR INDEPENDENT
☐ PASSIVE ROM	☐ ACTIVE ASSISTIVE	☐ NON-WEIGHT BEARING	☐ PROGRESS BED TO WHEELCHAIR	☐ COMPLETE AMBULATION
	☐ PROGRESSIVE RESISTIVE	☐ PARTIAL WEIGHT BEARING	☐ RECOVERY TO FULL FUNCTION	

ADDITIONAL THERAPIES	SIGNATURE OF AND TITLE OF THERAPIST	DATE
☐ O.T. ☐ SPEECH ☐ DIETARY		

SOCIAL WORK ASSESSMENT *(To be completed by Social Worker)*

PRIOR LIVING ARRANGEMENTS	LONG RANGE PLAN	
ADJUSTMENT TO ILLNESS OR DISABILITY	SIGNATURE OF SOCIAL WORKER	DATE

VA AUTHORIZATION FOR PAYMENT

DATE RECEIVED BY VA	ELIGIBILITY FOR PER DIEM PAYMENT	LEVEL OF CARE RECOMMENDED	
	☐ APPROVED ☐ DISAPPROVED	☐ NHC ☐ DOMICILIARY ☐ HOSPITAL	☐ ADHC
REASON FOR DISAPPROVAL		☐ APPROVED ☐ DISAPPROVED	REASON FOR DISAPPROVAL
SIGNATURE OF VA OFFICIAL	DATE	SIGNATURE OF VA PHYSICIAN	DATE

§ 51.224 VA Form 10–0143A—Statement of Assurance of Compliance with Section 504 of The Rehabilitation Act of 1973

OMB Number: 2900-0160
Estimated Burden: 5 minutes

Department of Veterans Affairs

STATEMENT OF ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 5 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

_____ (hereinafter called the "Signatory")
(Name and location of State Veterans Home)

HEREBY AGREES THAT

It will comply with section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112) and all regulations adopted pursuant to such section, for instance, VA Regulations 7800 Series (38 CFR Section 18), to the end that no person in the United States shall, on the ground of handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of the Signatory receiving Federal financial assistance or other benefits under statues administered by the VA; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate the agreement.

If any real property or structure thereon is provided or improved with the aid of the Federal financial assistance extended to the Signatory by the VA, this assurance shall obligate the Signatory, or in the case of transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In all cases this assurance shall obligate the Signatory for the period during which the Federal financial assistance is extended to any of its programs by the VA.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining Federal financial assistance, including facilities furnished or payments made under Section 1741 of Title 38 USC. Federal financial assistance is understood to include benefits paid directly to the Signatory, and/or benefits paid to a beneficiary contingent upon such beneficiary being enrolled in a program offered by the Signatory.

The Signatory recognizes and agrees that such Federal financial assistance or other benefits will be extended in reliance on the representations and agreements made in this assurance, and that the VA will withhold financial assistance, facilities, or other benefits to ensure fulfillment of this assurance of compliance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Signatory, its successors, transferees, and assignees. The person or persons whose signatures appear below are authorized to sign this assurance.

SIGNATURE OF AUTHORIZED OFFICIAL	
TITLE	DATE
MAILING ADDRESS	

VA FORM SEP1998 (R) 10-0143A REPRODUCE LOCALLY JetForm

§ 51.225 VA Form 10–0143—Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals

OMB Number: 2900-0188
Estimated Burden: 15 minutes

Department of Veterans Affairs

DEPARTMENT OF VETERANS AFFAIRS CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS FOR GRANTEES OTHER THAN INDIVIDUALS

Places of Performance: The grantee shall insert in the space provided below the site(s) for performance of work done in connection with the specific grant (street address, city, county, state, zip code)

ORGANIZATION NAME	GRANT NUMBER OR NAME
NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

VA FORM SEP1998 (R) 10-0143 REPRODUCE LOCALLY JetForm

§ 51.226 VA Form 10–0144—Certification Regarding Lobbying

OMB Number: 2900-0160
Estimated Burden: 5 minutes

Department of Veterans Affairs

CERTIFICATION REGARDING LOBBYING

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 5 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

This certification is made in compliance with Section 319 of Public Law 101-121; and pursuant to the Interim Final guidance published as part VII of the December 20, 1989, Federal Register (Pages 57306-52332).

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certified, to the best of their knowledge and belief, that the grantee certifies that it will provide a drug-free workplace by:

(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 any 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 Forms-LLL, "Disclosure Form to Repot 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

SIGNATURE OF CERTIFING OFFICIAL	DATE
NAME AND TITLE OF CERTIFING OFFICIAL	PROJECT (FAI NUMBER)
NAME AND ADDRESS OF STATE AGENCY	

VA FORM SEP1998 (R) 10-0144 REPRODUCE LOCALLY JetForm

§ 51.227 VA Form 10–0144A—Statement of Assurance of Compliance with Equal Opportunity Laws

OMB Number: 2900-0160
Estimated Burden: 5 minutes

Department of Veterans Affairs

STATEMENT OF ASSURANCE OF COMPLIANCE WITH EQUAL OPPORTUNITY LAWS

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 5 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

_____ (hereinafter called the"Signatory")
(Name of Organization, Institution, or Individual)

HEREBY AGREES THAT:

It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and all Federal regulations adopted to carry out such laws. This assurance is directed to the end that no person in the United States shall, on the ground of race, color, national origin (Title VI), handicap (Section 504), sex (Title IX, in education programs and activities only), or age (Age Discrimination Act) be excluded from participation in , be denied the benefits of, or be subjected to discrimination under any program or activity of the Signatory receiving Federal financial assistance or other benefits under statutes administered by VA (Department of Veteran Affairs), the ED (Department of Education), or any other Federal agency. This assurance applies whether assistance is given directly to the recipient or indirectly through benefits paid to a student, trainee, or other beneficiary because of enrollment or participation in a program of the Signatory.

The Signatory HEREBY GIVES ASSURANCE that it will promptly take measures to effect this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Signatory or ED, this assurance-shall obligate the Signatory, or in the case of transfer of such property any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In all cases, this assurance shall obligate the Signatory for the period during which the Federal financial assistance is extended to any of its programs by VA, ED or any other Federal agency.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining Federal financial assistance, including facilities furnished or payments made under sections 104 and 244(1) of Title 38, U.S.C. Also, sections 1713, 1720, 1720A, 1741-1743, 2408, 5902(a)(2), 8131-8137, 8151-8156 (formerly 613, 620, 620A, 641-643, 1008, 3402(a)(2), 5031-5037, 5051-5056 respectively) and 38 U.S.C. chapters 30, 31, 32, 35, 36, 82, and 10 U.S.C. chapter 106. Under the terms of an agreement between VA and ED, this assurance also includes Federal financial assistance given by ED through programs administered by that agency. Federal financial assistance is understood to include benefits paid directly to the Signatory and/or benefits paid to a beneficiary contingent upon the beneficiary's enrollment in a program or using services offered by the Signatory.

The Signatory agrees that Federal financial assistance or other benefits will be extended in reliance on the representations and agreements made in this assurance; that VA or ED will withhold financial assistance, facilities, or other benefits to assure compliance with the equal opportunity laws; and that the United States shall have the right to seek judicial enforcement of this assurance.

THIS ASSURANCE is binding on the Signatory, its successors, transferees, and assignees for the period during which assistance is provided. The Signatory assures ihat all contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits to its students or trainees in connection with the Signatory's programs or services are not discriminating against those students or trainees in violation of the above statutes.

The person whose signature appears below is authorized to sign this assurance.

SIGNATURE OF AUTHORIZED OFFICIAL	DATE

NAME AND TITLE OF AUTHORIZED OFFICIAL

MAILING ADDRESS OF AUTHORIZED OFFICIAL

VA FORM SEP 1998 **10-0144A** **REPRODUCE LOCALLY** JetForm

[FR Doc. 98–29597 Filed 11–6–98; 8:45 am]
BILLING CODE 8320–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0103b; FRL–6185–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the definition of volatile organic compound (VOC) and updates the Exempt Compound list in rules from the Sacramento Metropolitan Air Quality Management District (SMAQMD).

The intended effect of proposing approval of this action is to incorporate changes to the definition of VOC and to update the Exempt Compound list in SMAQMD rules to be consistent with the revised federal and state VOC definitions. EPA is proposing approval of these revisions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by December 9, 1998.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Rd., Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office [Air-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189)

SUPPLEMENTARY INFORMATION: This document concerns Sacramento Metropolitan Air Quality Management District Rule 101, General Provisions and Definitions; Rule 442, Architectural Coatings; Rule 443, Leaks From Synthetic Organic Chemical and Polymer Manufacturing; Rule 447, Organic Liquid Loading; Rule 452, Can Coating; Rule 456, Aerospace Assembly and Component Coating Operations; Rule 458, Large Commercial Bread Bakeries. These rules were submitted to EPA on May 18, 1998 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: October 26, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 98–29966 Filed 11–6–98; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 806, 812, 837, 852, and 873

RIN 2900–AI71

VA Acquisition Regulations: Simplified Acquisition Procedures for Health Care Resources

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs Acquisition Regulations (VAAR) to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space, pursuant to 38 U.S.C. 8151–8153. Presently, the VAAR does not contain simplified procedures. In the absence of such procedures, the Department of Veterans Affairs (VA) follows the Federal Acquisition Regulation (FAR) and the current VAAR. Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, authorized VA to prescribe simplified procedures for the procurement of health-care resources. This proposed rule prescribes those procedures.

DATES: Comments on the proposed rule should be submitted on or before January 8, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI71.'' All written comments received 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: Dennis Foley, (202) 273–9225, Office of the General Counsel, Professional Staff Group V; or Don Kaliher, (202) 273–8819, Acquisition Resources Service, Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: Currently, the acquisition of health-care resources that consist of commercial services or the use of medical equipment or space is governed by the Department of Veterans Affairs Acquisition Regulations (VAAR) and the Federal Acquisition Regulation (FAR). Statutory provisions at 38 U.S.C. 8153 (Pub. L. 104–262) specifically authorize the Secretary of Veterans Affairs, after consultation with the Administrator for Federal Procurement Policy, to establish simplified procedures for the competitive procurement of such health-care resources. VA has consulted with the Administrator for Federal Procurement Policy and VA proposes to establish simplified procedures as set forth in this document.

Under the provisions of the law, procurements under the simplified procedures may be conducted ''without regard to any law or regulation that would otherwise require the use of competitive procedures.'' Accordingly, the competitive procedures of any laws and regulations (including the competitive procedures of FAR and VAAR and their underlying laws) would be superseded by the simplified

procedures. However, under the provisions of the law, with certain exceptions, the simplified procedures are required to ''permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.'' This allows VA to limit competition to the extent it determines reasonable for the circumstances of each particular acquisition. Consistent with the principles set forth above, this document proposes to establish a new VAAR Part 873 setting forth such simplified procedures.

Under the provisions of 38 U.S.C. 8153, health-care resources consisting of commercial services, the use of medical equipment or space, or research, acquired from an institution affiliated with VA in accordance with 38 U.S.C. 7302, including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), blood banks, organ banks, or research centers, may be procured without regard to any law or regulation that would otherwise require the use of competitive procedures. The provisions at new VAAR Part 873.104 contain a statement explaining this sole source acquisition authority.

Proposed § 873.101, Policy, would provide that the procedures set forth in Part 873 would apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures would be used in conjunction with FAR, but VAAR Part 873 would take precedence over FAR and other Parts of VAAR. Currently, VAAR implements and supplements FAR. However, Public Law 104–262 grants VA authority to procure health-care resources consisting of commercial services or the use of medical equipment or space ''without regard to any other law or regulation that would require the use of competitive procedures. * * *'' Therefore, it is necessary to have Part 873 of VAAR take precedence over FAR and any other part of VAAR.

Proposed § 873.102 would add definitions for ''health-care resource,'' ''commercial service,'' and ''health-care providers.'' These definitions restate provisions of 38 U.S.C. 8152 and 8153. Previously, because of limitations under 38 U.S.C. 8153, procurements of commercial services or the use of medical equipment or space were limited to ''specialized medical resources.'' Consistent with the new definitions, the simplified procedures would govern procurements of commercial services or the use of medical equipment or space.

FAR 8.001(a)(2) sets forth three levels of priority, above the base level, for the acquisition of services. The base level is Federal Prison Industries or commercial sources. Proposed § 873.103 would exempt VA from the provisions of FAR 8.001(a)(2) regarding two of these levels of priority, mandatory and optional use Federal Supply Schedule (FSS) contracts. FSS contracts ensure prices associated with volume buying and should be used, if determined to provide best value, but would not have a higher priority than any other source. It is not proposed to affect the priority status for the acquisition of services available from the Committee for Purchase from People Who Are Blind or Severely Disabled, as required by the Javits-Wagner-O'Day (JWOD) Act. JWOD Act programs offer a valuable source of services for VA and have proved to be highly beneficial for both VA and program participants. The JWOD Act programs support VA's and other Federal Government agencies' procurement needs, and generate employment and training opportunities for people who are blind or have other severe disabilities. It is in the best interest of the Government to continue to support these valuable programs.

Proposed § 873.104, paragraphs (a) and (b), would restate the authority provided in the Act to acquire commercial services or the use of medical equipment or space from entities affiliated with VA, in accordance with 38 U.S.C. 7302, or approved entities associated with an affiliate (entities will be approved if determined legally to be associated with affiliated institutions), on a sole source basis without public notice and without further justification. Proposed § 873.104, paragraph (c), would provide that, on VA acquisitions of commercial services or the use of medical equipment or space from other sources, contracting officers would be required to seek competition to the maximum extent practicable rather than using full and open competition. This is consistent with provisions of the Act which provide that procurements may be conducted without regard to any law or regulation that would otherwise require use of competitive procedures. Competition to the maximum extent practicable is required to ensure that VA's acquisitions of commercial services or the use of medical equipment or space are conducted in an efficient and expeditious manner.

Proposed § 873.104, paragraph (d), restates the requirements of the Act that sole source acquisitions from sources other than affiliates or approved associates of affiliates (entities will be approved if determined legally to be associated with affiliated institutions) be justified and approved.

Proposed § 873.105 would exempt VA acquisitions of commercial services or the use of medical equipment or space from the acquisition planning procedures in FAR Part 7. However, the section emphasizes the indispensable importance of acquisition planning when acquiring health-care resources and imposes a requirement to form a team to assure a comprehensive plan. The proposed section also would impose a requirement on the team to conduct market research. This proposed section is necessary to simplify and streamline the acquisition process.

Proposed § 873.106 would exempt VA acquisitions of commercial services or the use of medical equipment or space from the market research requirements of FAR Part 10 but would provide optional market research techniques tailored specifically for use in acquiring commercial services or the use of medical equipment or space. This information is necessary to simplify market research while ensuring that contracting officers have a full range of techniques available for use in conducting market research when acquiring commercial services or the use of medical equipment or space.

Proposed paragraph (a) of § 873.107 would require acquisitions of commercial services or the use of medical equipment or space to be set aside for small business concerns if, through market research, the contracting officer determines that there is a reasonable expectation that reasonably priced offers would be received from two or more responsible small business concerns. This proposed section would also provide additional authority, over and above that found at FAR 19.502, for waiving the requirement for small business set-asides. FAR 19.502 currently provides that contracting officers can elect to not set aside a procurement if, generally, the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns at fair market prices. Under this proposed new section, in addition to that authority in FAR, the Head of the Contracting Activity would have the authority to approve a waiver from the requirement to set aside any procurement of commercial services or the use of medical equipment or space

based on a determination that it is in the best interest of the Government. Also, this proposed section provides that acquisitions of commercial services or the use of medical equipment or space valued between $2,500 and $100,000 would be exempt from the automatic reservation of acquisitions for small business concerns. These provisions are necessary to ensure that VA can procure commercial services or the use of medical equipment or space from the highest quality sources while still supporting small business concerns to the maximum practicable extent.

The rule would make certain changes to the administration of VA's small business program as it applies to the acquisition of health-care resources to reflect the fast-moving health-care market. For example, proposed paragraph (b) of § 873.107 would establish a streamlined process for handling disagreements between VA and the Small Business Administration regarding whether a procurement should be set aside for small business. These streamlined procedures would not alter VA's ongoing commitment to strong small business participation in its acquisition of health-care resources. Nor would they affect efforts to mitigate any potential negative impacts of contract consolidations on small businesses' ability to secure work. VA's Office of Small and Disadvantaged Business Utilization and Office of Acquisition and Materiel Management would jointly monitor the impact of the new procedures on small business participation to ensure opportunities are available for competitive small businesses.

Paragraph (c) of § 873.107 restates VA's intent to follow the FAR regarding the SBA 8(a) program. Paragraph (d) provides that VA's Office of Small and Disadvantaged Business Utilization and SBA's Office of Industrial Assistance shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency.

FAR 5.101 currently requires, with certain exceptions, that acquisitions with values exceeding $25,000 be announced in the Commerce Business Daily (CBD) for specified periods of time and states what must be included in the announcement. Proposed § 873.108 would exempt VA acquisitions of commercial services or the use of medical equipment or space below $100,000 from this requirement; would modify the requirement for publication of acquisitions above $100,000 to only require public announcement, utilizing a medium designed to obtain competition to the maximum extent practicable; would set the time requirements for announcement to be a ''reasonable time''; and would modify what must be included in the announcement. The medium to be used for announcements could be the CBD, the Internet, or any other means, as appropriate, depending on the complexity of the acquisition. This section also proposes, in accordance with authority provided in the Act, to conduct procurements for commercial services or the use of medical equipment or space without regard to any law or regulation that would otherwise require the use of competitive procedures and to exempt acquisitions from affiliates and entities associated with affiliates and sole source acquisitions from other sources from the requirement for publication of notice in the CBD. These provisions would streamline and simplify VA's acquisitions of commercial services or the use of medical equipment or space.

Proposed paragraphs (a) and (b) of § 873.109 would emphasize that the contracting officer (rather than the team) is the selecting official and would provide simplified guidance to contracting officers on statements of work and specifications. FAR requires certain documentation in contract files. Proposed paragraph (c) would provide simplified documentation requirements to be used in lieu of the FAR requirements. FAR requires specific time frames for announcing solicitations and procurement opportunities to the public and provides, for commercial solicitations, that quotations, bids, or proposals received late shall not be considered. Proposed paragraph (d)(1) would replace FAR announcement time requirements with a ''reasonable'' time requirement and paragraph (d)(2) would allow the contracting officer to accept late quotations or proposals if late receipt is determined by the contracting officer to be in the best interest of the Government. Late bids received in response to an Invitation for Bid (IFB) would not be considered. FAR provides certain minimum requirements that a contracting officer must meet before a solicitation can be canceled. Proposed paragraph (e) would exempt VA acquisitions of commercial services or the use of medical equipment or space from those minimum requirements and would provide that a contracting officer can cancel a solicitation if cancellation is determined to be in the best interest of the Government. All of these changes are proposed for the purpose of streamlining and simplifying VA's acquisitions of commercial services or the use of medical equipment or space.

Proposed § 873.110, paragraphs (a) through (e), would provide guidance to contracting officers on when to use the provisions and clauses in Part 852 of VAAR in VA acquisitions for commercial services or the use of medical equipment or space. Paragraph (f) would propose to require use of FAR clause 52.207–3, Right of First Refusal, in a solicitation in which current VA employees might be displaced as a result of contract award. This FAR clause ensures that those employees have a right of first refusal to any employment openings created with the contractor as a result of the contract award. This requirement is necessary to protect VA employees and to reduce the cost of contract award by reducing or avoiding unemployment compensation costs.

FAR places certain restrictions on when each type of acquisition procedure can be used. For instance, a request for quotation (RFQ) can be used for non-commercial service acquisitions costing up to $100,000 or for commercial service acquisitions costing up to $5 million. Proposed § 873.111 would remove all such restrictions, allowing use of the RFQ process for any acquisition of commercial services or the use of medical equipment or space, regardless of dollar value. This change is necessary to simplify VA's acquisition of commercial services or the use of medical equipment or space and to provide maximum flexibility to contracting officers.

For non-commercial service acquisitions exceeding the simplified acquisition threshold (SAT) (currently $100,000) or for commercial service acquisitions exceeding $5 million, FAR requires the use of full and open competition unless other statutory authority exists to limit competition. Paragraph (a)(1) of § 873.111 would provide, for acquisitions of commercial services or the use of medical equipment or space using the RFQ process, regardless of the dollar value of the acquisition, that competition to the maximum extent practicable may be used in lieu of full and open competition. FAR provides, for acquisitions below $25,000, that three quotations are considered sufficient to promote competition to the maximum extent practicable. Proposed paragraph (a)(2) would provide, for acquisitions of commercial services or the use of medical equipment or space below the SAT, that two quotations would be considered sufficient to promote competition to the maximum extent practicable. Proposed paragraph (a)(2) would also exempt VA acquisitions of commercial services or the use of medical equipment or space from any dollar value restrictions in FAR on the

use of RFQs, allowing VA to use the RFQ process for all acquisitions of commercial services or the use of medical equipment or space, regardless of the dollar value of the procurement. These changes are necessary to simplify and streamline VA's acquisition of commercial services or the use of medical equipment or space by allowing use of the RFQ process in any circumstance.

Proposed paragraph (b) of § 873.111 would provide that the procedures of FAR Part 14 would be used for VA sealed bid acquisitions of commercial services or the use of medical equipment or space. Proposed paragraph (c) of § 873.111 would provide that the negotiation procedures of FAR Parts 12, 13, and 15 would be used for negotiated acquisitions of commercial services or the use of medical equipment or space, except as modified in VAAR Part 873. These two paragraphs are informational only.

Proposed paragraph (d) of § 873.111 would provide an alternative negotiation procedure using a multiphase negotiation technique. This will supersede current FAR provisions for an advisory multi-step process that does not allow the Government to exclude offerors that are unlikely to be viable competitors. Multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Under a multiphase acquisition, VA would seek limited information on vendors' first submissions, make one or more down-selects based on the initial information, and request full proposals from the offerors remaining. This technique would ensure that only those firms most likely to receive awards would be required to expend the time and effort to prepare a full proposal. It would simplify and streamline the acquisition process and would save both vendors and the Government time and money.

Proposed paragraph (e) of § 873.111 would provide two additional alternative negotiation techniques, neither of which are currently provided for in FAR, for use by VA in acquiring commercial services or the use of medical equipment or space. The first technique would allow the contracting officer to indicate to all offerors, or to one or more offerors, a price, contract term or condition, commercially available feature, or other requirement that the offeror or offerors will have to improve upon or meet, as appropriate, in order to remain competitive. The second technique would allow contracting officers to post prices received on offers electronically or otherwise, without disclosing the identity of the offerors, and allow offerors to revise their prices based on the posted information. These procedures are necessary to assist contracting officers in procuring the highest quality health-care services at best value prices.

Proposed § 873.112 sets forth the evaluation requirements that VA contracting officers must place in solicitations. Currently, FAR has rigid requirements that evaluation factors and subfactors, as appropriate, be spelled out in a solicitation. In particular, there is a requirement, over certain dollar thresholds, to include vendor past performance as an evaluation factor. The contracting officer must document the reasons why past performance would not be included in an evaluation. This proposed section relieves contracting officers from these rigid requirements and allows them the flexibility to fashion their own acquisition-specific evaluation scheme with whatever information they deem to be in the best interest of the Government. However, this proposed section retains the requirement from FAR that price or cost to the Government still must be included in any evaluation.

Proposed § 873.113 sets forth a new standard for exchanges with offerors in negotiated acquisitions. Currently, under FAR, any contact with a vendor about the vendor's proposal that goes to the substance of the offer constitutes ''discussions.'' This causes a set of rules to go into effect, including a requirement that the Government hold ''discussions'' with every offeror, even if there is no need for discussions with those other offerors. Less important contact is referred to as ''clarification'' under existing rules. Moreover, there is another category called ''communications'' which goes to establishment of a competitive range. Under proposed § 873.113, the Government can have contact, called ''exchanges,'' at any time with any vendor, as required. However, as with the current regulations, the Government cannot improperly disclose information contained in another offeror's proposal (except see proposed at § 873.111(e), Alternative negotiation techniques).

Proposed § 873.114 sets forth a new concept of the ''best value pool.'' This is the ''pool'' of offeror(s) that, after initial evaluation, have the most highly rated proposals with the greatest likelihood of award. Although this is similar in concept to the ''competitive range'' of current regulation, the differences are that the contracting officer may limit the best value pool to a specific number of offerors among which an efficient competition can be conducted. Under the existing rules, the Government must consider every offeror that is acceptable or capable of being made acceptable. Therefore, the Government is forced to keep any number of marginal proposals in the competition even though they may have little real chance of securing an award. This proposed rule would eliminate this requirement and simplify the procurement process for both VA and vendors.

Proposed § 873.115 sets forth new procedures governing proposal revisions. Currently, once a ''competitive range'' has been developed, all offerors therein must be given a chance to revise their proposals. All revisions must be requested and received at the same time. Finally, at the close of ''discussions,'' all offerors remaining in the competition must be requested to submit a ''best and final offer.'' Under this proposed section, contracting officers may request proposal revisions as often as needed during the acquisition process. There is no need to have a common cutoff for submission of these revisions. Moreover, there is no need for a requirement to request a ''best and final offer'' from each and every offeror in every acquisition. The proposed section ensures that proposal submissions will be safeguarded against improper disclosures.

Proposed § 873.116 would provide guidance to contracting officers on source selection. FAR 15.308 contains specific requirements for documenting the source selection decision. This proposed section provides a less onerous procedure for documenting source selection than is described in FAR at 15.308.

Proposed § 873.117 would provide additional guidance to contracting officers on contract award, over and above that contained in FAR at 15.504, specifically on the differences between awarding RFQs and requests for proposals.

FAR 15.505 currently requires the contracting officer to provide a preaward debriefing if a written request for a debriefing is received from the offeror no later than 3 days after receipt by the offeror of notice of exclusion from the competitive range. Proposed § 873.118 would make preaward debriefings optional on the part of the contracting officer when determined to be in the best interest of the Government. This is necessary to

simplify and streamline the acquisition process.

Miscellaneous Changes

Currently, VAAR 801.602–70(a)(4) provides that proposed contracts for the mutual use or exchange of use of ''specialized medical resources'' above specified dollar thresholds be submitted to VA Central Office for review. This proposed rule would revise the term ''specialized medical resources'' to ''health-care resources'' pursuant to 38 U.S.C. 8152. The review threshold levels specified in VAAR have been changed by class deviation in accordance with 801.404. This document proposes to incorporate that class deviation and to raise the review thresholds. This is necessary to allow streamlined and expedited processing of proposed contracts and to reduce the administrative burden on contracting officers.

This proposed rule would make minor editorial changes to 801.602–71 and 801.601–72 to correspond with the new language used in this proposed rule.

VAAR 806.302–5(b) currently provides that contracts for the mutual use or exchange of use of specialized medical resources to be acquired from health-care facilities are approved for other than full and open competition, but requires justification and approval in accordance with FAR 6.303 and VAAR 806.303. Section 301 of Public Law 104–262 revised 38 U.S.C. 8153(a)(3)(A), restricting and modifying this authority. Under this new authority, only those acquisitions of health-care resources consisting of commercial services, the use of medical equipment or space, or research, to be acquired from institutions affiliated with the Department in accordance with 38 U.S.C. 7302, from medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, are approved for other than full and open competition. However, justification and approval is not required for contracts with these entities. This rule proposes to revise 806.302–5, paragraph (b), to incorporate this new authority into VAAR.

In addition, § 301 of Public Law 104–262 revised 38 U.S.C. 8153(a)(3)(B)(i) to provide that contracts for the acquisition of commercial services or the use of medical equipment or space, not procured from affiliated institutions or approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), may be procured without regard to any law or regulation that would otherwise require the use of competitive procedures, provided the procurement is conducted in accordance with the simplified procedures proposed in this rule. Public Law 104–262 revised 38 U.S.C. 8153(a)(3)(B)(ii) to require that such acquisitions permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) and revised 38 U.S.C. 8153(a)(3)(D) to require that such acquisitions, if conducted on a sole source basis, shall be justified and approved. This rule proposes to renumber current 806.302–5, paragraph (c), as paragraph (d) and to add new paragraph (c) to incorporate these new authorities into VAAR.

Currently, VAAR Part 812 addresses the acquisition of commercial services. This rule proposes to list the Part 52.273 clauses contained herein in Part 812 for use in commercial service acquisitions, as authorized by FAR 12.301(f). This action is necessary, and is proposed based on the reasons set forth below, to permit use of these Part 52.873 clauses in VA's commercial service acquisitions.

This rule proposes to add VAAR clause 852.237–7, Indemnification and Medical Liability Insurance, as shown below in full text, to § 812.302(f) for use in VA commercial service solicitations and contracts issued under the authority of 38 U.S.C. 8151–8153. VAAR clause 852.237–7 is currently set forth in 48 CFR Part 852. VA acquisitions under the authority of 38 U.S.C. 8151–8153 are considered to be for commercial services and clause 852.237–7 is necessary for use in such acquisitions to ensure that VA contractors providing nonpersonal health-care services have adequate medical liability insurance. This insurance is required to protect both VA and veterans from medical malpractice.

Indemnification and Medical Liability Insurance (Oct 1996)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [*Contracting Officer insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests*].

However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either

under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of Clause)

VAAR 837.403 currently requires the use of the above clause 852.237–7, Indemnification and Medical Liability Insurance, in lieu of FAR clause 52.237–7, in solicitations and contracts for nonpersonal health-care services. This rule proposes to clarify at 837.403 that this same VAAR clause must also be used in solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151–8153 and VAAR Part 873. The clause is necessary for use in VA solicitations and contracts to ensure that VA contractors providing nonpersonal health-care services have adequate medical liability insurance. This insurance is required to protect both VA and veterans from medical malpractice.

VAAR Part 852 does not currently contain any provisions specifically relating to the acquisition of commercial services under the simplified acquisition authority of 38 U.S.C. 8151–8153. This rule proposed to add four provisions to the VAAR, as set forth herein in Part 852. The following is an explanation of these proposed provisions.

The proposed provision at 852.273–70, Late offers, would replace paragraph (f) of FAR provision 52.212–1 in acquisitions for commercial services conducted in accordance with VAAR Part 873. Paragraph (f) of FAR provision 52.212–1 currently provides that offers or modifications of offers received after the exact time specified in the solicitation for receipt of offers will not be considered. VAAR provision 852.273–70 proposes to allow consideration of quotations, proposals, or modifications of proposals received after the time set forth in the request for quotations or request for proposals at the discretion of the contracting officer, if determined to be in the best interest of the Government. This will ensure that VA will be able to accept the best offer submitted on a solicitation, even if that offer is received after the time set forth in the solicitation.

Neither FAR nor VAAR currently contains provisions allowing alternative negotiation techniques. The provision at 852.273–71, Alternative negotiation techniques, proposes to allow the use of the alternative negotiation techniques set forth at 873.111(e). The techniques listed therein include (1) allowing the contracting officer to indicate to an offeror how the offeror must improve its offer in order to be considered for award and (2) allowing the contracting officer to post prices and permit revisions of offers based on that information. We believe these alternative negotiation techniques will allow VA to conduct acquisitions on a basis more in line with commercial practices and will result in the acquisition of improved services at reduced prices.

The proposed provision at 852.273–72, Alternative evaluation, would implement the provision at 852.273–71, Alternative negotiation techniques, by advising offerors how prices would be posted and by providing guidance to offerors on how to submit offers. In addition, this proposed provision would advise offerors on how options would be evaluated, i.e., by adding the total price of all options to the total price for the basic requirement. It would also advise offerors that the Government is not obligated to exercise the options. The ''options'' paragraph is included in this proposed provision because this provision might be used alone, without a separate ''options'' provision.

The proposed provision at 852.273–73, Evaluation—health-care resources, would replace FAR provision 52.212–2 in acquisitions for commercial services conducted in accordance with VAAR Part 873. FAR provision 52.212–2 provides guidance to offerors on what factors the Government will use to evaluate offers and on how those factors are weighted. Under proposed VAAR 873, VA would not be required to use factors to evaluate offers. Rather, VA would include information in the solicitation on how offers will be evaluated. In addition, VA would not be required to state how the evaluation information is weighted. This proposed provision is written to replace FAR 52.212–2 with these authorities in mind. Also, paragraph (c) has been drafted to clarify that notice of acceptance of an offer will create a binding contract if the solicitation is a request for proposals. If the solicitation is a request for quotations, that would not be the case, as notice of acceptance would not create a binding contract.

Provision at 852.273–74, Award without exchanges, is proposed to be added to VAAR to advise offerors that VA intends to evaluate proposals and award a contract without exchanges with offerors. This provision is necessary in order to avoid any misunderstanding regarding award and to help ensure that offerors provide their best prices and terms with their initial offer.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are contained in clause 852.237–7, Indemnification and Medical Liability Insurance, as set forth in the Supplementary Information portion of this proposed rule. Although this document proposes to add this clause for commercial item solicitations and contracts, this Paperwork Reduction Act notice of this document seeks approval for collections of information for both commercial and non-commercial item and service contracts for this clause. The clause can be used in both commercial and non-commercial item and service solicitations and contracts. As required under § 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA 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.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI71.''

Title and Provision/Clause Number: Clause 852.237–7, Indemnification and Medical Liability Insurance.

Summary of collection of information: This clause is used in solicitations for nonpersonal health-care services in lieu of FAR clause 52.237–7. It requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation and to notify the contracting officer if there are any changes in the firm's insurance coverage during the contract period. Prior to award, this evidence is in the form of a certificate from the firm's insurance company. After award, it is in the form of a letter or other correspondence, plus additional certificates.

Description of need for information and proposed use of information: The information is required to protect VA by ensuring that the firm to which award will be made possesses the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

Description of likely respondents: Apparent successful bidders/offerors on solicitations for nonpersonal health-care services.

Estimated number of respondents: 10,000.

Estimated frequency of responses: Once for each contract awarded, plus once each time a contractor changes its insurance coverage.

Estimated average burden per collection: 30 minutes.

Estimated total annual reporting and recordkeeping burden: 5000 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This proposed rule would establish simplified procedures for the acquisition of health-care resources by VA. Costs, if any, to comply with the provisions of the proposed rule would be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects

48 CFR Parts 801 and 852

Government Procurement, Reporting and recordkeeping requirements.

48 CFR Parts 806, 812, 837, and 873

Government Procurement.

Approved: November 2, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR chapter 8 is proposed to be amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citations for Part 801 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.602–70 [Amended]

2. In § 801.602–70, paragraphs (a)(4)(vi) and (a)(4)(vii) are proposed to be revised to read as follows:

801.602–70 Legal/technical review requirements to be met prior to contract execution.

(a) * * *

(4) * * *

(vi) Except as specified in paragraph (a)(4)(vii), competitive contracts exceeding $1.5 million and noncompetitive contracts exceeding $500,000 for scarce medical specialist services negotiated under the authority of 38 U.S.C. 7409 or for health-care resources acquired under the authority of Part 873 and 38 U.S.C. 8151–8153.

(vii) Any contract or agreement negotiated under the authority of 38 U.S.C. 8151–8153 for VA to provide inpatient services, administrative resources, the use of medical equipment or space, prosthetics, supplies, or laundry services.

* * * * *

3. In § 801.602–71, paragraph (b)(2) is proposed to be revised to read as follows:

801.602–71 Processing contracts for legal/technical review.

* * * * *

(b) * * *

(2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602–70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with VHA Directive 97–015 and VA Manual M–1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

* * * * *

4. In § 801.602–72, paragraph (b) is proposed to be revised to read as follows:

801.602–72 Documents to be submitted for legal review.

* * * * *

(b) For proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602–70(a)(4)(vi) and (a)(4)(vii), the documents referred to in VA Manual M–1, Part 1, Chapter 34.

* * * * *

PART 806—COMPETITION REQUIREMENTS

5. The authority citations for Part 806 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

6. In § 806.302–5, paragraph (b) is proposed to be revised to read as follows:

806.302–5 Authorized or required by statute.

* * * * *

(b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151–8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.

* * * * *

7. In § 806.302–5, paragraph (c) is proposed to be redesignated as paragraph (d) and a new paragraph (c) is proposed to be added to read as follows:

806.302–5 Authorized or required by statute.

* * * * *

(c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151–8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring resources, provided the procurement is conducted in accordance with the simplified procedures contained in part 873. The justification and approval requirements of FAR 6.303 and VAAR 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

* * * * *

PART 812—ACQUISITION OF COMMERCIAL ITEMS

8. The authority citations for Part 812 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

812.301 [Amended]

9. In § 812.301, paragraph (g) is proposed to be added to read as follows:

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(g) When soliciting for commercial services or the use of medical equipment or space under the authority of part 873 and 38 U.S.C. 8151–8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained in parts 837 and 873:

(1) 852.237–7, Indemnification and Medical Liability Insurance.

(2) 852.273–70, Late offers.

(3) 852.273–71, Alternative negotiation techniques.

(4) 852.273–72, Alternative evaluation.

(5) 852.273–73, Evaluation—health-care resources.

(6) 852.273–74, Award without exchanges.

PART 837—SERVICE CONTRACTING

10. The authority citations for Part 837 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

837.403 [Amended]

11. Section 837.403 is proposed to be amended by adding, at the end of the first sentence, ‘‘, including solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151–8153 and VAAR Part 873’’.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. The authority citations for Part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

13. Section 852.273–70 is proposed to be added to read as follows:

852.273–70 Late offers.

As prescribed in 873.110(a), insert the following provision:

Late Offers (Date)

This provision replaces paragraph (f) of FAR Provision 52.212–1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an Invitation for Bid (IFB) will not be considered.

(End of provision)

14. Section 852.273–71 is added to read as follows:

852.273–71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

Alternative Negotiation Techniques (Date)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

15. Section 852.273–72 is added to read as follows:

852.273–72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

Alternative Evaluation (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by—[*Contracting officer insert description of how the information may be viewed electronically or otherwise*]. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government’s best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

16. Section 852.273–73 is added to read as follows:

852.273–73 Evaluation—health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212–2, the contracting officer may insert a provision substantially as follows:

Evaluation—Health-Care Resources (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers: [*Contracting officer insert evaluation information or factors, such as technical capability to meet the Government’s requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price shall be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance.*]

(b) Except when it is determined not to be in the Government’s best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a Request for Proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

17. Section 852.273–74 is added to read as follows:

852.273–74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

Award Without Exchanges (Date)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

18. Part 873 is added to read as follows:

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

Sec.
873.101 Policy.
873.102 Definitions.
873.103 Priority sources.
873.104 Competition requirements.
873.105 Acquisition planning.
873.106 Presolicitation exchanges with industry.
873.107 Socioeconomic programs.
873.108 Publicizing contract actions.
873.109 General requirements for acquisition of health-care resources.
873.110 Solicitation provisions.
873.111 Acquisition strategies for health-care resources.
873.112 Evaluation information.
873.113 Exchanges with offerors.
873.114 Best value pool.
873.115 Proposal revisions.
873.116 Source selection decision.
873.117 Award to successful offeror.
873.118 Debriefings.

Authority: 38 U.S.C. 8151–8153.

873.101 Policy.

The simplified acquisition procedures set forth in this VAAR part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR). However, when a policy or procedure in FAR or another part of VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR.

873.102 Definitions.

Commercial service means a service, except construction exceeding $2,000, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

Health-care providers includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

Health-care resource includes hospital care and medical services (as those terms are defined in § 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space.

873.103 Priority sources.

Without regard to FAR 8.001(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) and FAR Subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

873.104 Competition requirements.

(a) Without regard to FAR Part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with § 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis.

(b) Acquisition of health-care resources identified in paragraph (a) are not required to be publicized as otherwise required by § 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in § 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR Part 6, is not required.

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers shall seek competition to the maximum extent practicable and shall permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by § 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in § 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR Part 6.

873.105 Acquisition planning.

(a) This section shall be used in lieu of FAR Part 7. Acquisition planning is an indispensable component of the total acquisition process. Acquisition planning may involve identifying requirements, available funding, and sources, and development of a statement or description of work, a Government estimate, and/or evaluation information.

(b) Within VA and for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, an acquisition team shall be assembled. The team shall be tailored by the contracting officer for each particular acquisition and include the appropriate mix of contracting, fiscal, legal, administrative, and technical personnel, the small business advocate representing the contracting activity or a higher level designee, an SBA Procurement Center Representative, if available, and such other expertise to assure a comprehensive acquisition plan.

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the acquisition team shall conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in § 873.108.

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR Part 10. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and

others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the acquisition team's discretion, as coordinated by the contracting officer.

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research;

(4) One-on-one meetings with potential offerors;

(5) Presolicitation notices;

(6) Draft Requests for Proposals (RFPs);

(7) Requests for Information (RFIs);

(8) Presolicitation or preproposal conferences;

(9) Site visits;

(10) Electronic notices (e.g., Internet); and

(11) Use of the Procurement Marketing and Access Network (PRO–NET).

873.107 Socioeconomic programs.

(a) *Implementation.* This paragraph provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. If, through market research, there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources shall be reserved for small business participation. The Head of the Contracting Activity may approve a waiver from the requirement for any set-aside for small business participation when it is determined to be in the best interest of the Government. For acquisitions between $2,500 and $100,000, the automatic reservation for small business concerns, as provided in FAR 19.502–2(a), is not applicable.

(b) *Rejecting Small Business Administration (SBA) Recommendations.* (1) HCA's shall consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the HCA and if SBA intends to appeal that determination, SBA shall, within 1 working day after receipt of the HCA's determination, notify the contracting officer of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final appeal decision to SBA, the contracting officer shall suspend action on the acquisition unless a determination is made in writing by the contracting officer that proceeding to contract award and performance is in the public interest. The contracting officer shall promptly notify SBA of the determination to proceed with the solicitation and/or contract award and shall provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the HCA for acquisitions not exceeding $5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding $5 million, to file an appeal. SBA shall notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final.

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR Part 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Determinations of Responsibility and Small Business.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and Director, Office of Industrial Assistance, Small Business Administration (SBA) shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU.

873.108 Publicizing contract actions.

(a) Without regard to FAR 5.101, all acquisitions under this Part 873 for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR Part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this Part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Commerce Business Daily; the Internet; and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.101 or 14.202–1, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government.

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with § 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, or to sole source acquisitions of hospital care and medical services (as those terms are defined in § 1701 of title 38 U.S.C.) or any other health-care services.

(c) For acquisitions below the SAT, a public announcement is optional.

(d) Each solicitation issued under these procedures shall prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and VAAR Part 873.

873.109 General requirements for acquisition of health-care resources.

(a) *Source Selection Authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this VAAR Part 873.

(b) *Statement of work/Specifications.* Statements of work or specifications may define the requirement and include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, small business or other socio-economic preferences, or any other such terms as the contracting officer deems appropriate for each specific acquisition.

(c) *Documentation.* Without regard to FAR 13.106–3(b), 13.501(b), or 14.408–

7(a) and (b), the contract file shall include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212–1(f), quotations or proposals received after the time set forth in a RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers shall document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in VAAR 873.111(e)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs).

(e) *Cancellation of procurements.* Any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government.

873.110 Solicitation provisions.

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273–70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold.

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273–71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used.

(c) The contracting officer shall insert the provision at 852.273–72, Alternative evaluation, in lieu of the provision at 52.212–2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used.

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273–73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212–2.

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273–74, Award without exchanges, in the RFQ or RFP.

(f) The contracting officer shall insert the clauses at FAR 52.207–3, Right of First Refusal of Employment, and at VAAR 852.207–70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151–8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees.

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions.

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers should solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs should notify vendors of the basis upon which the award is to be made.

(2) Without regard to FAR 13.104(b), for acquisitions under the simplified acquisition threshold (SAT), two quotes meet the requirement for competition to the maximum extent practicable. For acquisitions in excess of the SAT, procedures set forth in FAR Part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein.

(b) *Sealed bidding.* FAR Part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* The procedures of FAR Parts 12, 13, and 15 shall be used for negotiated acquisitions, except as modified in this VAAR part.

(d) *Multiphase acquisition technique*—(1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice shall contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice shall advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a Commerce Business Daily notice or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the

second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers shall debrief offerors as required by 873.118 when they have been excluded from the competition.

(e) *Alternative negotiation techniques*—(1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104).

873.112 Evaluation information.

(a) Without regard to FAR 15.304, the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government.

(b) Price or cost to the Government shall be evaluated in every source selection.

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate.

(d) The relative importance of any evaluation information included in a solicitation shall be set forth therein.

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this VAAR part 873.

(b) Exchanges with all potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal.

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal.

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors.

(e) *Improper exchanges.* Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR Parts 3 and 24.

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary.

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this VAAR part 873.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar supplies and services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror.

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision shall be provided to unsuccessful offerors at the earliest practicable time.

873.115 Proposal revisions.

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members shall safeguard proposals, and revisions

thereto, to avoid unfair dissemination of an offeror's proposal.

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

873.116 Source select decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine: which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation; and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance.

(c) The basis for the source selection decision shall be documented and shall reflect the rationale for any cost/technical tradeoffs. Specific tradeoffs that cannot be reasonably quantified need not be described in terms of cost/price impacts.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, the contracting officer must obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer shall sign the contract award.

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

873.118 Debriefings.

Offerors excluded from multiphase acquisitions or best value pools may make a written request for a debriefing. Without regard to FAR 15.505, preaward debriefings will be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR Part 15.506.

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DEPARTMENT OF ENERGY

48 CFR Parts 909 and 970

RIN: 1991–AB44

Acquisition Regulations; Performance Guarantees

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its acquisition regulations to formally require a performance guarantee under circumstances where a prospective awardee has been created solely for the performance of the instant contract and lacks sufficient financial or other resources to fulfill its obligations under the prospective contract. In circumstances where the newly created entity likely will be dependent upon the resources of the parent organization, this proposal would allow Contracting Officers to consider the resources of the parent in a determination of the newly created entity's responsibility only when the parent provides a performance guarantee or other undertaking satisfactory to the Contracting Officer. While this situation occurs most often in the award of contracts for the management and operation of DOE facilities, this proposal would make a form of performance guarantee necessary whenever these circumstances are encountered.

DATES: Written comments on the proposed rulemaking must be received on or before close of business December 9, 1998.

ADDRESSES: Comments (3 copies) should be addressed to: Robert M. Webb at the address indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

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II. Section by Section Analysis.
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H. Review Under the Unfunded Mandates Reform Act of 1995.

I. Background

The Department of Energy in certain cases requires that the contractor be a corporate entity organized specifically for the performance of the contract at a specific DOE site. This requirement occurs regularly in the award of management and operating contracts and is intended (1) to assure the dedication of the contractor to the performance of the contract; (2) to limit involvement of the Department with the corporate parent; (3) to isolate the contractor from the parent for purposes of security and classification matters; (4) to limit the flow of information between the contractor and its parent, limiting a potential source of organizational conflict of interest; (5) to isolate the accounting system of the contractor, since often the budget and accounting systems of such contractors are integrated into DOE's budget and accounting systems; and (6) to limit the necessity of corporate support thereby reducing or negating a basis for charging general and administrative expense to the contract.

Such dedicated contractors, however, generally have limited assets. In most cases, without consideration of the corporate assets of the parent entity(ies), the DOE Contracting Officer would not be able to make a determination that the contractor was financially responsible and had sufficient resources available to assure successful performance of the contract.

It has been a common practice of the Department in such instances for the parent entity(ies) to provide some form

of guarantee of performance. While there are other means for the parent to guarantee the subsidiary's fulfillment of all its contractual obligations, such as an unconditional letter of credit, the most appropriate means under these circumstances is a contractually binding performance guarantee. Recently, the Department issued Acquisition Letter 98–05R to assure a uniform process for dealing with this circumstance. This rulemaking proposes to incorporate the requirement for a performance guarantee into the Department of Energy Acquisition Regulation.

II. Section-by-Section Analysis

This rulemaking proposes to add a subsection 909.104–3(e) to the DEAR to supplement the coverage in the Federal Acquisition Regulation at 48 CFR 9.104–3. The proposed subsection would require some binding form of performance guarantee in contracts other than management and operating contracts where the contractor has been formed specifically for performance of the contract and lacks sufficient resources to carry out performance of the prospective contract.

It further proposes to add a section 970.0902 to treat this matter in the context of the award of DOE management and operating contracts. Since this situation will occur predominately in the award of management and operating contracts, the proposed 970 coverage includes a solicitation provision for use when DOE's solicitation requires a dedicated performing entity.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this proposed rule was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The contracts to which this rulemaking would apply involve awards to newly formed subsidiaries organized by a parent corporations to perform specific DOE contracts. In such instances, the parent would be required to guarantee the performance of the subsidiary. There would not be an adverse economic impact on contractors or subcontractors. Accordingly, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule merely reflects current practice relating to determinations of responsibility. States which contract with DOE will be subject to this rule. However, DOE has determined that this proposed rule would not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that this proposed rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This proposed rulemaking would only affect

private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 909 and 970

Government procurement.

Issued in Washington, D.C. on November 2, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 909—[AMENDED]

1. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 909.104–3 is added as follows:

909.104–3 Application of standards. (DOE coverage-paragraph (e))

(e) DOE may select an entity which was newly created to perform the prospective contract, including, but not limited to, a joint venture or other similarly binding corporate partnership. In such instances when making the determination of responsibility pursuant to 48 CFR 9.103, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

PART 970—[AMENDED]

3. The authority citation for Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub.L. 95–91 (42 U.S.C. 7254).

4. Section 970.0902 is added as follows:

970.0902 Determination of responsibility.

(a) In the award of a management and operating contract, the contracting officer shall determine that the prospective contractor is a responsible contractor and is capable of providing all necessary financial, personnel, and other resources in performance of the contract.

(b) DOE contracts with entities that have been created solely for the purpose of performing a specific management and operating contract. Such a newly created entity generally will have very limited financial and other resources. In such instances, when making the determination of responsibility required under this section, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. A performance guarantee should be the means used unless an equivalent degree of commitment can be obtained by an alternative means.

(c) The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

(d) Contracting officers shall insert the provision at 970.5204-XX in solicitations where the awardee is required to be organized solely for performance of the requirement.

5. Section 970.5204-XX is added as follows:

§ 970.5204-XX Requirement for guarantee of performance.

In accordance with 970.0902(d), insert the following provision in appropriate solicitations.

Requirement for Guarantee of Performance (XXX 1998)

The successful proposer is required by other provisions of this solicitation to organize a dedicated corporate entity to carry out the work under the contract to be awarded as a result of this solicitation. The successful proposer will be required, as part of the determination of responsibility of the newly organized, dedicated corporate entity and as a condition of the award of the contract to that entity, to furnish a guarantee of that entity's performance. That guarantee of performance must be satisfactory in all respects to the Department of Energy.

In order to consider the financial or other resources of the parent corporate entity(ies) or other guarantors, each of those entities must be legally bound, jointly and severally if more than one, to provide the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor.

[FR Doc. 98–29941 Filed 11–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4672]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Price T. Bingham, a private individual. The petitioner requested that the agency initiate rulemaking to require air bag sensors to be designed so that data is recorded during a crash and can be read by crash investigators. The agency agrees that the recording of crash data from air bag sensors, as well as other vehicle sensors, can provide information that is very valuable in understanding crashes. This information can then be used in a variety of ways to improve motor vehicle safety. The agency is denying the petition because the auto industry is already voluntarily moving in the direction recommended by the petitioner. Further, the agency believes this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from Price T. Bingham, a private individual. Mr. Bingham stated that air bag sensors are capable of collecting and recording data that could be extremely valuable to crash investigators. He stated his concern in light of air bag deployments that might be ''spontaneous,'' but did not limit his petition to that issue. The petitioner asked the agency to initiate rulemaking to require manufacturers to design their air bag sensors so that data are collected and recorded during a crash so that they can be read by crash investigators.

NHTSA notes that the safety community in recent years has had considerable interest in the concept of crash event recorders. Such recorders can, in conjunction with the air bag and other sensors already provided on many vehicles, collect and record a variety of relevant crash data. These data include such things as vehicle speed, belt use, and crash pulse.

The additional and more accurate data about crashes that could be provided by crash event recorders would enable investigators to develop a significantly better understanding of how and why crashes occur. This information could then be used in a variety of ways to improve motor vehicle safety, e.g., the information could be used to improve vehicle designs, improve safety standards, and develop improved public education campaigns.

A more immediate safety benefit can occur if the occurrence of a crash is immediately and automatically communicated to local emergency services, thereby shortening the response time of the correct emergency services. NHTSA's Office of Vehicle Safety Research is currently testing, in the Buffalo, New York area, an Automated Collision Notification system that uses single point electronic crash sensors, a global positioning system receiver and a cellular phone to facilitate emergency services dispatch. This program has been the subject of recent press articles, copies of which are being placed in the docket.

The agency notes that on June 10, 1997, the National Transportation Safety Board (NTSB) adopted a series of recommendations concerning air bag safety and occupant restraint use which, among other things, called on NHTSA and the vehicle manufacturers ''to develop and implement * * * a plan to gather better information on crash pulses and other crash parameters in actual crashes, utilizing current or augmented crash sensing and recording devices.'' The recommendations followed a public forum convened by the NTSB in March 1997.

Also, the Jet Propulsion Laboratory, in its April 1998 Advanced Air Bag Technology Assessment, included a recommendation that NHTSA study the feasibility of installing and obtaining crash data for safety analyses from crash recorders on vehicles.

The auto industry is already beginning to voluntarily install crash event recorders on some vehicles. For example, General Motors (GM) has had crash event recorders on some of its vehicles for several years and is planning to install more advanced systems in the future. NHTSA notes that, as part of a recent investigation carried out by its Special Crash Investigations program, it was able to use information obtained from a GM vehicle equipped with a crash event recorder.

Persons who are interested in knowing more about GM's program for crash event recorders may wish to read a recent article on that subject that was published in the Detroit News. The agency is placing a copy of that article in the docket. Also, at the agency's invitation, GM made a presentation concerning its crash event recorders at NHTSA's September 17, 1998 quarterly meeting held to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory and research program. Information presented by GM at this meeting is being placed in the docket.

While NHTSA believes that crash event recorders have the potential to provide valuable information for its vehicle regulatory program, the agency believes that a rulemaking to require such recorders is not now appropriate. First, as discussed above, the industry is already moving to voluntarily provide such recorders. Second, as the development and installation of these recorders, and decisions about what data should be recorded and how they should be retrieved, are in their infancy, NHTSA believes it is premature to consider regulating such devices. Given this context, such a rulemaking would not appear to be a good use of limited agency resources.

Moreover, there are a variety of issues related to the implementation of crash event recorders that may be better addressed, at least initially, outside the rulemaking context. In addition to deciding what specific crash data to record, other issues include, among other things, possible standardization of the means for retrieving the data, access to the data by the agency and crash investigators, and privacy issues.

The agency notes that the means for retrieving data from crash event recorders is currently proprietary. This means that the involvement of the vehicle manufacturer is necessary to retrieve the data. NHTSA has not had any difficulty obtaining cooperation from vehicle manufacturers to obtain data from crash event recorders. While the retrieval of such data would be facilitated if the means for retrieving it were standardized, a number of issues may need to be addressed in order to achieve such standardization, e.g., analysis of available alternative means for retrieval and consideration of privacy and related issues.

NHTSA introduced the topic of crash event recorders (these devices are also called event data recorders or EDRs) for action to the Motor Vehicle Safety Research Advisory Committee (MVSRAC) during its April 29, 1998 meeting. MVSRAC consists of 16 members representing governments, industry, academia, the medical community and public interest groups and functions to advise NHTSA about complex technical topics. MVSRAC approved setting up a working group on EDRs under the Crashworthiness Subcommittee. The agency solicited names from the full committee and subcommittee for nomination to work on the working group. The first meeting of the working group took place in October, and others are planned for next year.

NHTSA believes that the approach of relying on the efforts of individual manufacturers to voluntarily introduce crash event recorders, coupled by the work of the MVSRAC working group on this subject, is the best way to proceed at this time. The involvement of the MVSRAC working group will ensure that issues relating to the implementation and use of crash event recorders receive the attention of a wide variety of experts, and that the agency obtains the benefit of hearing the views of those experts. Moreover, NHTSA will ensure that MVSRAC considers topics of particular interest to the agency, including access to the data by the agency.

For the reasons discussed above, the agency is denying Mr. Bingham's petition for rulemaking.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 3, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–29922 Filed 11–6–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF25

Migratory Bird Hunting; Regulations to Increase Harvest of Mid-Continent Light Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Mid-continent lesser snow goose and Ross' goose population

has nearly quadrupled in the last 30 years. The Western Central Flyway lesser snow and Ross' goose population also has quadrupled in the last 23 years. Collectively, these central and eastern arctic and subarctic-nesting light goose populations are referred to as Mid-continent light geese (MCLG)

Due to high population growth rates, a decline in adult mortality, and an increase in winter survival, MCLG are now seriously injurious to their habitat and habitat important to other migratory birds which poses a serious threat to the short and long-term health and status of migratory bird populations. The U.S. Fish and Wildlife Service (Service or ''we'') believes that MCLG populations exceed long-term sustainable levels for their arctic and subarctic breeding habitats and the populations must be reduced. This proposed rule will authorize the use of additional hunting methods (electronic callers and unplugged shotguns) during a normal open light-goose hunting season when all other migratory bird hunting seasons are closed. We designed the program to increase MCLG harvest and to provide a biologically sound and cost effective and efficient method for the reduction and management of overabundant MCLG populations.

DATES: The comment period for this proposed rule closes January 8, 1999.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Bob Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Lesser snow and Ross' geese that primarily migrate through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas and other Gulf Coast States are referred to as the Mid-continent population of light geese (MCP). Lesser snow and Ross' geese that primarily migrate through Montana, Wyoming, and Colorado and winter in New Mexico, northwestern Texas, and Chihuahua, Mexico are referred to as the Western Central Flyway population of light geese (WCFP). Ross' geese are often mistaken for lesser snow geese due to their similar appearance. Ross' geese occur in both the MCP and the WCFP and mix extensively with lesser snow geese on both the breeding and wintering grounds. MCP and WCFP lesser snow and Ross' geese are collectively referred to as Mid-continent light geese (MCLG) because they breed, migrate, and winter in the ''Mid-continent'' or central portions of North America primarily in the Central and Mississippi Flyways. They are referred to as ''light'' geese due to their light coloration as opposed to ''dark'' geese such as the white-fronted or Canada goose.

MCLG breed in the central and eastern arctic and subarctic regions of Northern Canada. MCLG populations are experiencing high population growth rates and have substantially increased in numbers within the last 30 years. MCP light geese have more than tripled within 30 years from an estimated 800,000 birds in 1969 to approximately three million birds in 1998 and have grown an average of 5% per year for the last ten years (Abraham et al. 1996, USFWS 1998b). WCFP light geese have quadrupled in 23 years from 52,000 in 1974 to 216,000 in 1997 (USFWS 1997b), and have increased an average of 9% per year for the last ten years (USFWS 1998b). The above population estimates are not true population counts and likely underestimate the true population sizes. They were derived from an index which is used to detect population growth trends by sampling a portion of a population. Breeding colony estimates, actual population counts estimated from spring and summer surveys, suggest that the actual population sizes of MCLG may be in excess of five million breeding birds (D. Caswell pers. comm. 1998). For example, in one area northwest of Hudson Bay alone, the Queen Maud Gulf, estimates for breeding and non-breeding (failed to successfully nest) adult Ross' and lesser snow geese for 1998 are 1.29 million and 1.82 million birds, respectively (Alisauskas et al. 1998). These geese are in addition to the millions of geese estimated to be nesting along west Hudson and James Bays where the geese have precipitated severe habitat degradation and on Southampton and Baffin Islands where signs of habitat degradation are becoming evident. MCLG populations have exceeded the North American Waterfowl Management Plan (NAWMP) population objective levels in both the United States and Canada. NAWMP population objective levels are used to demonstrate that MCLG populations have increased substantially over what is considered to be a healthy population level, not to suggest that MCLG be reduced to NAWMP population objective levels. Population management thresholds, however, are management thresholds that specify both an upper and lower population level objective.

Ross' geese (WCFP and MCP) currently exceed 200,000 birds (December index) and breeding colony estimates (actual counts of nesting birds) approached 400,000 birds in 1996 (Batt 1997) and exceeded 1 million birds in1998; both estimates well exceed the recommended minimum population objective level for Ross' geese of 100,000 birds (USDOI et al. 1998). MCP lesser snow geese estimates currently exceed 2.8 million birds (December index); the lower and upper population management thresholds are 800,000 and 1.2 million birds, respectively (Central and Mississippi Flyway Councils 1982) with a recommended minimum population objective level of 1 million birds (USDOI et al. 1998). WCFP lesser snow goose estimates currently exceed 200,000 birds (December index) which exceeds the recommended minimum population objective level of 110,000 birds (USDOI et al. 1998). Although our intention is to significantly reduce these populations to relieve pressures on the breeding habitats, we feel that these efforts will not threaten the long-term status of these populations as we are confident reduction efforts will not result in the populations falling below the population goal and management objective levels indicated above. Evaluation and assessment mechanisms are in place to estimate population sizes and will be used to prevent the over-harvest of these populations.

The rapid rise of MCLG populations has been influenced heavily by human activities (Sparrowe, 1998, Batt 1997). The greatest attributable factors are:

(1) The expansion of agricultural areas in the United States and prairie Canada that provide abundant food resources during migration and winter;

(2) The establishment of sanctuaries along the Flyways specifically to increase bird populations;

(3) A decline in harvest rate; and

(4) An increase in adult survival rates.

Although all of these factors contributed to the rapid rise in MCLG populations, the expansion of agriculture in prairie Canada and the United States is considered to be the primary attributable factor (Sparrowe 1998, Abraham and Jefferies 1997). Today, MCLG continue to exploit soybean, rice, and other crops during the winter primarily in the Gulf Coast States and are observed less frequently

in the natural coastal marshes they historically utilized. Similarly, MCLG migrating through the Mid-latitude and northern United States and prairie Canada during spring migration exploit cereal grain crops consisting of corn, wheat, barley, oats and rye (Alisauskas et al. 1988). For example, an estimated 1 to 2 million MCLG stage in the Rainwater Basin in Nebraska from mid-February to mid-March and primarily feed on corn left over from harvesting (USFWS 1998a). These crops provide MCLG with additional nutrients during spring migration assuring that MCLG arrive on the breeding grounds in prime condition to breed. Increased food subsidies during spring migration over the last 30 years has resulted in higher reproductive potential and breeding success (Ankney and McInnes 1978, Abraham and Jefferies 1997). Consequently, more geese survived the winter and migration and were healthier as they returned to their breeding grounds in Canada.

This is not intended to criticize the conservation efforts accomplished by the implementation of conservation-oriented agricultural practices. Such efforts have benefitted numerous wildlife species. It is merely to point out that MCLG have exploited these artificial resources which has resulted in an increase in survival.

Foraging Behavior of MCLG

The feeding behavior of MCLG is characterized by three foraging methods. Where spring thawing has occurred and above-ground plant growth has not begun, lesser snow geese dig into and break open the turf (grub) consuming the highly nutritious below-ground biomass, or roots, of plants. Grubbing continues into late spring. Lesser snow geese also engage in shoot-pulling where the geese pull the shoots of large sedges, consume the highly nutritious basal portion, and discard the rest, leaving behind large unproductive, and potentially unrecoverable areas (Abraham and Jefferies 1997). A third feeding strategy utilized by many species is grazing which in some cases, stimulates plant growth. Both lesser snow geese and Ross' geese graze. Due to their shorter bill size, Ross' geese are able to graze shorter stands of grass.

Grubbing, grazing, and shoot-pulling are natural feeding behaviors and at lower population levels have had positive effects on the ecosystem. For example, at lower numbers, geese fed on the tundra grasses and actually stimulated growth of plant communities resulting in a positive feedback loop between the geese and the vegetation. However, the rapidly expanding numbers of geese, coupled with the short tundra growing season, disrupted the balance and has resulted in severe habitat degradation in sensitive ecosystems. The Hudson Bay Lowlands salt-marsh ecosystem, for example, consists of a 1,200 mile strip of coastline along west Hudson and James Bays, Canada. It contains approximately 135,000 acres of coastal salt-marsh habitat. Vast hypersaline areas devoid of vegetation degraded by rapidly increasing populations of MCLG have been observed and documented extensively throughout the Hudson Bay Lowlands (Abraham and Jefferies 1997). Rockwell et al. (1997a) observed the decline of more than 30 avian populations in the La Pérouse Bay area due to severe habitat degradation. These declines and other ecological changes represent a decline in biological diversity and indicate the beginning of collapse of the current Hudson Bay Lowlands salt-marsh ecosystem. Much of the degraded habitat is unlikely to recover (Abraham and Jefferies 1997). In badly degraded areas, less than 20% of the vegetation within an exclosure has recovered after 15 years of protection from MCLG (Abraham and Jefferies 1997). Recovery rates of degraded areas are further slowed by the short tundra growing season and the high salinity levels in the exposed and unprotected soil.

Long-term research efforts have indicated signs of ''trophic cascade'' in La Pérouse Bay, Cape Henrietta Maria, and Akimiski Island (R. Rockwell pers. comm. 1998). Trophic cascade is essentially the collapse of an existing food chain indicating that the ecosystem is unable to support its inhabitants. Impacts associated with trophic cascade are indicative that MCLG populations have exceeded the carrying capacity of much of their breeding habitat. Impacts such as a decline in biological diversity and physiological stress, malnutrition, and disease in goslings have been documented and observations of such impacts are increasing. Additional observations in areas north of Hudson Bay on Southampton and Baffin Islands, northwest in the Queen Maud Gulf region, and south off the west coast of James Bay on Akimiski Island also suggest similar habitat degradation patterns from expanding colonies of MCLG. Batt (1997) reported the rapid expansion of existing colonies and the establishment of new colonies in the central and eastern arctic. In 1973, for example, Canadian Wildlife Service data indicated that approximately 400,000 light geese nested on West Baffin Island. In 1997, approximately 1.8 million breeding adults were counted. Similar colony expansions have been reported for the Queen Maud Gulf region and Southampton Island. Rapid colony expansion must be halted and the populations must be reduced to prevent further habitat degradation and to protect the remaining habitat upon which numerous wildlife species depend.

Breeding Habitat Status

MCLG breeding colonies occur over a large area encompassing eastern and central portions of Northern Canada. Habitat degradation by MCLG has been most extensively studied in specific areas where colonies have expanded exponentially and exhibit severe habitat degradation. The Hudson Bay Lowlands salt-marsh ecosystem, for example, lies within a 135,000 acre narrow strip of coastline along west Hudson and James Bays and provides important stopover sites for numerous migratory bird species. Of the 135,000 acres of habitat in the Hudson Bay Lowlands, 35% is considered to be destroyed, 30% is damaged, and 35% is overgrazed (Batt 1997). Habitats currently categorized as ''damaged'' or ''overgrazed'' are moving and will continue to move into the ''destroyed'' category if goose populations continue to expand. Accelerated habitat degradation has occurred on Southampton and Baffin Islands and appear to be following the same pattern as documented in the Hudson Bay Lowlands. Current research efforts are underway to confirm observations of habitat degradation by MCLG in other areas.

Migration and Wintering Habitat Conditions and Degradation

There is no evidence to suggest that wintering habitat for MCLG is threatened or that it may limit population growth. Presently, there are approximately 2.25 million acres of rice fields in Texas, Louisiana, and Arkansas, in addition to the millions of acres of cereal grain crops in the Midwest. Consequently, food availability and suitable wintering habitat are not limiting MCLG during the migration and wintering portions of the annual cycle.

Summary of Environmental Consequences of Taking No Action

At each site they occupy, MCLG will continue to degrade the plant communities until food and other resources are exhausted, forcing yet more expansion. The pattern has been, and will continue to be, that as existing nesting colonies expand, they exploit successively poorer quality habitats,

which are less able to accommodate them and which become degraded more quickly. Eventually, the coastal salt-marsh communities surrounding Hudson Bay and James Bay will become remnant with little chance of recovery as long as MCLG populations remain high and for some time after it declines from natural causes, if they do. The functioning of the whole coastal ecosystem, from consolidation of sediments by colonizing plants to provision of suitable habitats for invertebrate and vertebrate fauna, will be detrimentally and possibly irrevocably altered. Similar conditions will likely come to prevail at selected non-coastal areas where MCLG have occupied most of the suitable nesting habitats. As many as 30 other avian species, including American wigeon, Northern shoveler, stilt sandpiper, Hudsonian godwit, and others, that utilize those habitats have declined locally, presumably due to habitat degradation by MCLG. Other species, such as Southern James Bay Canada geese, a species of management concern, that breed on nearby Akimiski Island and numerous other waterfowl species that migrate and stage with MCLG, have been and will continue to be negatively impacted. Arctic mammalian herbivores will also be impacted as the vegetative communities upon which they depend become depleted.

We expect that MCLG populations will continue to grow at least 5% annually, resulting in more severe and widespread ecological impacts. Although several factors influence population dynamics, the greatest single factor in the populations' increase is high and increasing adult survival rates (Rockwell et al. 1997b). Therefore, removing adults from the populations is the most effective and efficient approach in reducing the populations. Experts feel that breaking eggs and other non-lethal techniques have been determined to be ineffective in significantly reducing the populations within a reasonable time to preserve and protect habitat (Batt 1997).

We have attempted to curb the growth of MCLG populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Migratory Bird Treaty. However, due to the rapid rise in MCLG numbers, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested), has declined despite evidence that the number of geese harvested has increased (USFWS 1997). The decline in harvest rate indicates that the current management strategies are not sufficient to stabilize or reduce population growth rates.

We realize that current MCLG management policies need to be re-examined and believe that alternative regulatory strategies designed to increase MCLG harvest, implemented concurrently with habitat management and other non-lethal control measures, have the potential to be effective in reducing MCLG populations to levels that the remaining breeding habitat can sustain. We prefer to implement alternative regulatory strategies designed to increase MCLG harvest afforded by the Migratory Bird Treaty and avoid the use of more drastic population control measures. More direct population control measures such as trapping and culling programs may be necessary if the current proposed action is not successful. Should the proposed action be unsuccessful in five years, we will consider more direct population control measures to reduce MCLG.

We restrict the scope of this proposed rule to Mid-continent populations of light geese (MCLG): Mid-continent and Western Central Flyway lesser snow geese *(Chen caerulescens caerulescens)* and Ross' geese *(C. rossi)* and the United States portions of the Central and Mississippi Flyways (primarily Alabama, Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming) where they migrate, stage, or winter. Evidence exists to support the conclusion that MCLG migrate, stage, and winter in these areas and breed in the arctic and subarctic areas that are experiencing severe habitat degradation.

We are concurrently proposing an additional but separate population reduction strategy. In addition to this proposed rule to amend 50 CFR part 20, we are also proposing to amend 50 CFR part 21 to authorize the use of a conservation order to increase take of MCLG. The conservation order will be in the nature of an order authorizing States to implement actions to harvest MCLG, by shooting in a hunting manner, inside or outside of the regular open migratory bird hunting season frameworks when all migratory bird hunting seasons are closed. This proposal is also in the nature of a proposed rule and the notice and request for comments appears in this issue of the **Federal Register**.

We do not expect this proposed action (amendment to 50 CFR part 20) implemented alone to achieve our management objective which is to reduce MCLG populations such that the December index falls within 800,000 and 1.2 million birds. The success of this strategy will hinge upon State participation, hunter participation, and hunter effectiveness. If a State does not participate, then its hunters will not be able to participate decreasing the program's potential. We do not expect some States to participate in this proposed action due to the infeasibility of implementing the action when all other migratory bird hunting seasons are closed. MCLG migrate through northern and Mid-latitude States in the fall, however, the geese typically do not reach some of those States prior to 10 March during spring migration. For those States to be able to utilize this proposed action, they would have to close all other migratory bird hunting seasons in the fall, which is highly unlikely. Conversely, many migratory bird hunting seasons in the southern States close prior to 10 March. Therefore, it is much more feasible for southern States to implement this proposed action by establishing a light-goose only season when all other migratory bird seasons are closed. We are proposing the second action (conservation order) referred to above in order to maximize the program's potential and obtain our management objective within a reasonable time-frame to avoid the use of more direct population control programs. The second proposed action, a conservation order, will allow northern States to participate in this effort and enable them to harvest MCLG during spring migration, particularly after 10 March. Harvest projections for this proposed action (amendment to 50 CFR part 20) are rolled into the harvest projections for the second proposed action (conservation order) and are not in addition to the harvest projections for the second proposed action.

Proposed Revision to 50 CFR 20

We propose to revise 50 CFR part 20.21 with the intent to increase harvest of Mid-continent light geese during the open hunting season (MCLG) by authorizing the use of electronic callers and unplugged shotguns during a light goose only season when all other migratory bird hunting seasons are closed. This is in an effort to reduce overabundant MCLG populations that have become seriously injurious to other migratory bird populations and to habitat essential to migratory bird populations. Conditions under the proposed regulation require that participating States inform all hunters acting under the authority of the proposed amendment of the conditions

that apply to the utilization of this proposed amendment.

Under the authority of this proposed rule, States could develop and initiate aggressive harvest management strategies by offering hunters additional hunting methods to harvest MCLG with the intent to increase harvest of MCLG. By operating under an existing program, a regular light-goose only season, affected States would not have to create a new program to implement the proposed action, which would significantly reduce administrative burden to the State and Federal governments. In order to minimize or avoid negative impacts to non-target species and to eliminate confusion regarding enforcement of the restrictions associated with this proposed action, States may only implement this proposed action when all other migratory bird hunting seasons are closed. Although we expect this proposed action to facilitate other protection and recovery efforts,, we do not expect this proposed action (amendment to 50 CFR part 20) implemented alone to achieve our management objective. Therefore, we are concurrently proposing an additional but separate population reduction strategy (discussed above) to work in concert with this proposed action to obtain our management objective. We feel the overall strategy will result in biologically sound and more cost-effective and efficient overabundant MCLG population management and could preclude the use of more drastic, direct population control measures such as trapping and culling programs. Although the desired goal is to significantly reduce overabundant MCLG populations, we believe that this proposed action will not threaten the long-term health and status of MCLG populations or threaten the status of other species that could be impacted through the implementation of this proposed action. Evaluation and monitoring strategies are in place to assess the overall impacts of this proposed action on MCLG harvest and impacts to non-target species that may be affected by the implementation of this proposed action.

Summary of Environmental Consequences of Proposed Action

MCLG Populations and Associated Habitats

We project that we will harvest two million MCLG over the next three years without the use of this proposed action based on current MCLG harvest trends. Under certain assumptions, our most liberal estimate indicates that we can expect to harvest an additional one million MCLG within three years of implementation of this proposed action bringing the total harvest to three million MCLG within three years of implementation of this proposed action. Once the December index falls within 800,000 to 1.2 million birds, the proposed amendments to 50 CFR part 20 will be revoked. The impact is expected to be regional within the Central and western Mississippi Flyway States. MCLG winter in the southern States in the Flyways substantially longer than northern or Mid-latitude States. Therefore, the opportunity to harvest more MCLG is greatest in those States. Additional hunting methods authorized by a State under the authority of this proposed rule, will facilitate a hunter's ability to harvest more MCLG and will facilitate other efforts to increase adult mortality and therefore decrease numbers of MCLG.

Although we can expect the additional hunting methods to be effective, there is no precedent to guide us in determining to what degree they will be effective. It is equally difficult to ascertain to what degree the public will utilize the new methods, which will influence its effectiveness. However, with certain assumptions, we may project an increase in harvest using existing harvest data.

Several assumptions must be established before projecting the effect of the proposed action on harvest. We are assuming that all affected States will act under the authority of this proposed rule and allow the additional methods authorized in this proposed action, that current MCLG hunter numbers will not decrease, and that the new hunting methods authorized in this proposed action, if used, will increase hunter effectiveness and overall harvest. We do not assume that all MCLG hunters will use the new hunting methods and of those that do, we do not assume that all will increase their effectiveness. We are assuming that 25% of the current MCLG hunters will use the new hunting methods and increase his/her effectiveness in harvesting MCLG.

We determined, based on a linear regression analysis of historical harvest data, that harvest number has increased approximately 31,600 MCLG per year for the last ten years. A simple linear regression of the harvest data represents our most conservative estimate because the analysis does not take into account other factors that influence harvest such as the recent regulation changes for light geese. A more complex analysis demonstrates that harvest number has actually increased at a faster rate since the bag and possession limits for light geese have been increased (USFWS 1998c). Today, more MCLG are harvested with fewer hunters and hunter participation and light goose hunting is increasing. Therefore, conservatively, we projected that harvest will increase 31,600 per year for the next 5 years.

In 1997–98, 602,800 MCLG were harvested in the affected States (AR, CO, IL, IA, KS, LA, MS, MO, MT, NE, NM, ND, OK, SD, TX, and WY). Combined with our projection that harvest will increase by 31,600 per year without any changes to hunting regulations, we can expect to harvest 634,400 MCLG in the 1998–1999 regular light goose season in those affected States. Under the assumptions stated above, we can expect to harvest an additional 301,300 MCLG through the implementation of this proposed action during a light-goose only season bringing the total projected harvest to 935,700 MCLG in the first year of implementation of this proposed action. These figures are based on increasing harvest number. Therefore, we expect this projected harvest to increase annually. We expect to harvest 1.1 million MCLG in the second year of implementation and 1.2 million in the third year of implementation.

Central and Mississippi Flyway Council management guidelines suggest that MCLG populations should rest between approximately 800,000 and 1.2 million birds based on the December index (USFWS 1998b, Central and Mississippi Flyway Councils 1982). Batt (1997) estimate that the populations should be reduced by 50% by 2005. Based on the December index, that would suggest a reduction from approximately three million birds to approximately 1.5 million birds in the December index; a figure which coincides with the management guidelines determined by the Central and Mississippi Flyway Council. Therefore, our efforts will focus on a goal similar to those documented. It is important to understand that the December index is not a population count. It is simply used to detect population growth trends by sampling a portion of a population. The reduction of MCLG will be carefully analyzed and assessed on an annual basis using the December index and other surveys to ensure that the populations are not over-harvested.

We expect an increase in harvest to facilitate other efforts, such as habitat management on the wintering grounds and increased harvest of MCLG by Canadian aboriginals, to decrease MCLG numbers and relieve pressures on the breeding grounds. There is no evidence

to suggest that the use of additional hunting methods during a light-goose only season will result in an over-harvest of MCLG. Once the December index reflects a number within the management guidelines mentioned above (approximately 800,000–1.2 million), the proposed action will be revoked and the methods authorized will no longer be allowed. It is improbable that the use of the additional methods will threaten the long-term status of MCLG populations because we will monitor the MCLG populations and act accordingly to avoid it by modifying or revoking the proposed action.

Other Species

An increase in harvest, and subsequently a decrease in MCLG numbers, is expected to relieve pressures on other migratory bird populations that utilize MCLG breeding and wintering grounds and other areas along the migration routes. It is expected to reduce the possibility that other species will be forced to seek habitat elsewhere or abandon unsuitable degraded habitat altogether, which could potentially result in decreased reproductive success of affected populations. We expect a decrease in MCLG populations to contribute to increased reproductive success of adversely impacted populations. Further, we expect that by decreasing the numbers of MCLG on wintering and migration stopover areas, the risk of transmitting avian cholera to other species will be reduced which will reduce the threat of a widespread avian cholera outbreak. We do not expect the proposed action to result in an increased intake of non-target species. The proposed action will only be allowed when all other migratory bird hunting seasons are closed.

Socioeconomic

Any action taken has economic consequences. Continued inaction is likely to result in ecosystem failure of the Hudson Bay Lowlands salt-marsh ecosystem and potentially other ecosystems as MCLG populations expand and exploit new habitats. Without more effective population control measures to curb the populations, the populations of MCLG are expected to continue increasing and become more and more unstable as suitable breeding habitat diminishes. As population densities increase, the incidence of avian cholera among MCLG and other species is likely to increase throughout the Flyways, particularly at migration stopover sites. Losses of other species such as pintails, white-fronted geese, sandhill cranes, and whooping cranes, from avian cholera may be great. This may result in reduced hunting, birdwatching, and other opportunities. It may also result in the season closures of adversely impacted migratory game birds such as white-fronted geese, sandhill cranes, and pintails. Goose damage to winter wheat and other agricultural crops will continue and worsen. Habitat damage in the Arctic will eventually trigger density-dependent regulation of the population which likely will result in increased gosling mortality and may cause the population to decline precipitously. However, it is not clear when such population regulation will occur and what habitat, if any, will remain to support the survivors. Such a decline may result in a population too low to permit any hunting, effectively closing MCLG hunting seasons. The length of the closures will largely depend on the recovery rate of the breeding habitat which likely will take decades. Although the overall impact of closures of light-goose seasons in the Central and Mississippi Flyways that could result from continued degradation of the breeding habitat is small on a national scale, it would be concentrated where large flocks of geese stage and winter. As hunter services tend to be performed by people with low incomes, the impact of a closure would fall disproportionately on low income groups near goose concentrations. We expect the proposed action to reduce the risk of light-goose season closures in the Central and Mississippi Flyways and avoid a $70 million loss in output and reduce the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies.

Public Comment Received

On April 6, 1998, we issued in the **Federal Register** (63 FR 16819) a notice of intent announcing that we would develop a draft Environmental Assessment to examine alternative regulatory strategies to reduce MCLG populations. This notice invited public comment on possible regulatory alternatives. The notice also advised the public that the draft Environmental Assessment along with a proposed rule would be published in the **Federal Register** later this year for public review and comment.

As a result of this invitation for public comment, 247 comments consisting of 1 from a Federal agency, 8 from State wildlife agencies, 7 from private organizations, 1 from a Flyway Council, 115 from private citizens, and 115 from people who signed a petition were received. Comments were generally dichotomized by two key points of concern.

To summarize, 186 comments were supportive of our intent to examine alternative regulatory strategies designed to increase MCLG harvest to reduce the MCLG population. These commenters agreed that there was a problem and that the resolution should entail reduction by lethal means and supported the use of additional hunting methods to increase harvest of MCLG. Comments in support of such action were received from 1 Federal agency, 8 State wildlife agencies, 1 Flyway Council, 5 private conservation agencies, 94 private citizens, and 77 from people who signed a petition. Conversely, 59 comments received were in opposition to the Service's intent to reduce MCLG populations by use of lethal means either because they believe it is not scientifically justified to reduce the populations or attempts to do so would be inhumane. Instead, these commenters offered two non-lethal recommendations to reduce the populations: (1) Hazing adults off nests and (2) egging (destroying nests) on the breeding grounds. Comments in support of no action or non-lethal action were received from 2 private animal welfare agencies, 19 private citizens, and 38 from people who signed a petition. Additionally, 2 comments were received in support of reducing the populations by use of lethal means, however, recommended use of Federal and State wildlife agency programs such as trapping and culling.

Service Response: We are also opposed to the inhumane treatment of any birds and we do not believe that authorizing additional hunting methods or by providing additional opportunities to increase harvest of MCLG is inhumane. We also prefer non-lethal control activities, such as habitat modification, as the first means of resolving this issue. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are sometimes necessary to increase the effectiveness of non-lethal management methods. Further, MCLG breed in remote locations in the arctic and subarctic regions of Northern Canada. Implementing control activities in those areas is cost-prohibitive and dangerous. Instead, we feel that providing States with additional opportunity and means to increase MCLG harvest while implementing non-lethal control measures concurrently is the most efficient and feasible short-term

solution. We will continue to work jointly with the Canadian Wildlife Service to reduce MCLG in both the United States and in Canada.

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NEPA Considerations

We have prepared a draft Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, in connection with this proposed regulation. The EA is available for public review at the above address.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that '' Each Federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' Consequently, we initiated Section 7 consultation under the ESA for this proposed rulemaking. Completed results of our consultation under Section 7 of the ESA may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management at the above address.

Regulatory Flexibility Act, Executive Order 12866, and Executive Order 12630

The economic impacts of this proposed rulemaking will fall disproportionately on small businesses because of the structure of the waterfowl hunting related industries. The proposed regulation benefits small businesses by avoiding ecosystem failure to an ecosystem that produces migratory bird resources important to American citizens. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. We expect the proposed action to reduce the risk of light-goose season closures in the Central and Mississippi Flyways subsequently avoiding a $70 million loss in output and reducing the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies. We have determined that a Regulatory Flexibility Act Analysis is not required. Migratory bird regulations are recognized as exempt from takings implication assessment under E.O. 12630. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act and Information Collection

This regulation does not require any additional information collection under the Paperwork Reduction Act. The information collection is covered by an existing Office of Management and Budget approval number. The information collections contained in § 20.20 have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015 for the administration of the Migratory Bird Harvest Information Survey (50 CFR 20.20). 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.

Unfunded Mandates

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*) that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule will not ''significantly or uniquely'' affect small governments. No governments below the State level will be affected by this rule. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or

greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This rule has been reviewed by the Office of the Solicitor. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. It is not anticipated that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Public Comment Invited

The policy of the Department of the Interior is, whenever practical, to afford you the opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposal to the location identified in the address section above. Comments must be received on or before (Insert 60 days from the date of publication of this notice). Following review and consideration of the comments, we intend to issue a final rule.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' (50 CFR 21.60) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to '' Office of Regulatory Affairs, Department of the Interior, room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons given in the preamble, we hereby propose to amend part 20 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C 703–712; and 16 U.S.C. 742 a–j.

PART 20—[AMENDED]

§ 20.21 [Amended]

1. Revise paragraphs (b) and (g) of § 20.21 *Hunting methods* to read as follows:

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. *Provided that* during a light-goose only season when all other migratory bird hunting seasons are closed, nothing in this paragraph (b) prohibits the taking of lesser snow and Ross' geese in Alabama, Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming with a shotgun that is capable of holding more than three shells. This exception is subject to an annual assessment by the Service based on harvest data collected from the previous year to determine the effectiveness of this section in meeting the management goals and objectives associated with the reduction of Mid-continent light goose (lesser snow and Ross' geese) populations. The Service will annually publish the determination of that assessment in the **Federal Register**.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. *Provided that* during a light goose only season when all other migratory bird hunting seasons are closed, nothing in this paragraph (g) prohibits the taking of lesser snow and Ross' geese in Alabama, Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, South Dakota, and Wyoming with recorded or electrically amplified bird calls or sounds or recorded or electrically amplified imitations of bird calls or sounds. This exception is subject to an annual assessment by the Service based on harvest data collected from the previous year to determine the effectiveness of this regulation in meeting the management goals and objectives associated with the reduction of Mid-continent light goose (Mid-continent lesser snow and Ross' geese) populations. The Service will annually publish the determination of that assessment in the **Federal Register**.

* * * * *

Dated: October 30, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–29953 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF05

Migratory Bird Permits; Establishment of a Conservation Order for the Reduction of Mid-Continent Light Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Mid-continent lesser snow goose and Ross' goose population has nearly quadrupled in the last 30 years. The Western Central Flyway lesser snow and Ross' goose population also has quadrupled in the last 23 years. Collectively, these central and eastern arctic and subarctic-nesting light goose populations are referred to as Mid-continent light geese (MCLG)

Due to high population growth rates, a decline in adult mortality, and an increase in winter survival, MCLG are now seriously injurious to their habitat and habitat important to other migratory birds which poses a serious threat to the short and long-term health and status of migratory bird populations. The U.S. Fish and Wildlife Service (Service or ''we'') believes that MCLG populations exceed long-term sustainable levels for their arctic and subarctic breeding habitats and the populations must be reduced. This proposed rule proposes the addition of a new subpart to 50 CFR

part 21 for the management of overabundant MCLG populations. We, in cooperation with State wildlife agencies, are further proposing to implement a population control program by establishing a conservation order for MCLG under the authority of the proposed subpart. This proposed rule will increase the use and availability of additional hunting methods and will authorize take of MCLG outside of the normal open light-goose hunting season. We designed the program to increase MCLG harvest and to provide a biologically sound and cost effective and efficient method for the reduction and management of overabundant MCLG populations.

DATES: The comment period for this proposed rule closes January 8, 1999.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, ms 634—ARLSQ, 1849 C Street NW, Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Comments and suggestions on the requirements should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW, Washington DC 20204.

FOR FURTHER INFORMATION CONTACT: Bob Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Lesser snow and Ross' geese that primarily migrate through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas and other Gulf Coast States are referred to as the Mid-continent population of light geese (MCP). Lesser snow and Ross' geese that primarily migrate through Montana, Wyoming, and Colorado and winter in New Mexico, northwestern Texas, and Chihuahua, Mexico are referred to as the Western Central Flyway population of light geese (WCFP). Ross' geese are often mistaken for lesser snow geese due to their similar appearance. Ross' geese occur in both the MCP and the WCFP and mix extensively with lesser snow geese on both the breeding and wintering grounds. MCP and WCFP lesser snow and Ross' geese are collectively referred to as Mid-continent light geese (MCLG) because they breed, migrate, and winter in the ''Mid-continent'' or central portions of North America primarily in the Central and Mississippi Flyways. They are referred to as ''light'' geese due to their light coloration as opposed to ''dark'' geese such as the white-fronted or Canada goose.

MCLG breed in the central and eastern arctic and subarctic regions of Northern Canada. MCLG populations are experiencing high population growth rates and have substantially increased in numbers within the last 30 years. MCP light geese have more than tripled within 30 years from an estimated 800,000 birds in 1969 to approximately three million birds in 1998 and have grown an average of 5% per year for the last ten years (Abraham et al. 1996, USFWS 1998b). WCFP light geese have quadrupled in 23 years from 52,000 in 1974 to 216,000 in 1997 (USFWS 1997b), and have increased an average of 9% per year for the last ten years (USFWS 1998b). The above population estimates are not true population counts and likely underestimate the true population sizes. They were derived from an index which is used to detect population growth trends by sampling a portion of a population. Breeding colony estimates, actual population counts estimated from spring and summer surveys, suggest that the actual population sizes of MCLG may be in excess of five million breeding birds (D. Caswell pers. comm. 1998). In an area northwest of Hudson Bay alone, the Queen Maud Gulf, estimates for breeding and non-breeding (failed to successfully nest) adult Ross' and lesser snow geese for 1998 are 1.29 million and 1.82 million birds, respectively (Alisauskas et al. 1998). These geese are in addition to the millions of geese estimated to be nesting along west Hudson and James Bays where the geese have precipitated severe habitat degradation and on Southampton and Baffin Islands where signs of habitat degradation are becoming evident. MCLG populations have exceeded the North American Waterfowl Management Plan (NAWMP) population objective levels in both the United States and Canada. NAWMP population objective levels are used to demonstrate that MCLG populations have increased substantially over what is considered to be a healthy population level, not to suggest that MCLG be reduced to NAWMP population objective levels. Population management thresholds, however, are management thresholds that specify both an upper and lower population level objective.

Ross' goose estimates (WCFP and MCP) currently exceed 200,000 birds (December index) and breeding colony estimates (actual counts of nesting birds) approached 400,000 birds in 1996 (Batt 1997), and exceeded 1 million birds 1998; both estimates well exceed the recommended minimum population objective level for Ross' geese of 100,000 birds (USDOI et al. 1998d). MCP lesser snow geese estimates currently exceed 2.9 million birds (December index); the lower and upper population management thresholds are 800,000 and 1.2 million birds, respectively (Central and Mississippi Flyway Councils 1982) with a recommended minimum population objective level of 1 million birds (USDOI et al. 1998d). WCFP lesser snow goose estimates currently exceed 200,000 birds (December index) which exceeds the recommended minimum population objective level of 110,000 birds (USDOI et al. 1998d). Although our intention is to significantly reduce these populations to relieve pressures on the breeding habitats, we feel that these efforts will not threaten the long-term status of these populations as we are confident reduction efforts will not result in the populations falling below the population goal and management objective levels indicated above. Evaluation and assessment mechanisms are in place to estimate population sizes and will be used to prevent the over-harvest of these populations.

The rapid rise of MCLG populations has been influenced heavily by human activities (Sparrowe, 1998, Batt 1997). The greatest attributable factors are:

(1) The expansion of agricultural areas in the United States and prairie Canada that provide abundant food resources during migration and winter;

(2) The establishment of sanctuaries along the Flyways specifically to increase bird populations;

(3) A decline in harvest rate; and

(4) An increase in adult survival rates.

Although all of these factors contributed to the rapid rise in MCLG populations, the expansion of agriculture in prairie Canada and the United States is considered to be the primary attributable factor (Sparrowe 1998, Abraham and Jefferies 1997). Today, MCLG continue to exploit soybean, rice, and other crops during the winter primarily in the Gulf Coast States and are observed less frequently in the natural coastal marshes they historically utilized. Similarly, MCLG migrating through the Mid-latitude and northern United States and prairie

Canada during spring migration exploit cereal grain crops consisting of corn, wheat, barley, oats and rye (Alisauskas et al. 1988). For example, an estimated 1 to 2 million MCLG stage in the Rainwater Basin in Nebraska from mid-February to mid-March and primarily feed on corn left over from harvesting (USFWS 1998a). These crops provide MCLG with additional nutrients during spring migration assuring that MCLG arrive on the breeding grounds in prime condition to breed. Increased food subsidies during spring migration over the last 30 years has resulted in higher reproductive potential and breeding success (Ankney and McInnes 1978, Abraham and Jefferies 1997). Consequently, more geese survived the winter and migration and were healthier as they returned to their breeding grounds in Canada.

This is not intended to criticize the conservation efforts accomplished by the implementation of conservation-oriented agricultural practices. Such efforts have benefitted numerous wildlife species. It is merely to point out that MCLG have exploited these artificial resources which has resulted in an increase in survival.

Foraging Behavior of MCLG

The feeding behavior of MCLG is characterized by three foraging methods. Where spring thawing has occurred and above-ground plant growth has not begun, lesser snow geese dig into and break open the turf (grub) consuming the highly nutritious below-ground biomass, or roots, of plants. Grubbing continues into late spring. Lesser snow geese also engage in shoot-pulling where the geese pull the shoots of large sedges, consume the highly nutritious basal portion, and discard the rest, leaving behind large unproductive, and potentially unrecoverable areas (Abraham and Jefferies 1997). A third feeding strategy utilized by many species is grazing which in some cases, stimulates plant growth. Both lesser snow geese and Ross' geese graze. Due to their shorter bill size, Ross' geese are able to graze shorter stands of grass.

Grubbing, grazing, and shoot-pulling are natural feeding behaviors and at lower population levels have had positive effects on the ecosystem. For example, at lower numbers, geese fed on the tundra grasses and actually stimulated growth of plant communities resulting in a positive feedback loop between the geese and the vegetation. However, the rapidly expanding numbers of geese, coupled with the short tundra growing season, disrupted the balance and has resulted in severe habitat degradation in sensitive ecosystems. The Hudson Bay Lowlands salt-marsh ecosystem, for example, consists of a 1,200 mile strip of coastline along west Hudson and James Bays, Canada. It contains approximately 135,000 acres of coastal salt-marsh habitat. Vast hypersaline areas devoid of vegetation degraded by rapidly increasing populations of MCLG have been observed and documented extensively throughout the Hudson Bay Lowlands (Abraham and Jefferies 1997). Rockwell et al. (1997a) observed the decline of more than 30 avian populations in the La Pérouse Bay area due to severe habitat degradation. These declines and other ecological changes represent a decline in biological diversity and indicate the beginning of collapse of the current Hudson Bay Lowlands salt-marsh ecosystem. Experts fear that some badly degraded habitat will not recover (Abraham and Jefferies 1997). For example, in a badly degraded area, less than 20% of the vegetation within an exclosure (fenced in area where geese cannot feed) has recovered after 15 years of protection from MCLG (Abraham and Jefferies 1997). Recovery rates of degraded areas are further slowed by the short tundra growing season and the high salinity levels in the exposed and unprotected soil.

Long-term research efforts have indicated signs of ''trophic cascade'' in La Pérouse Bay, Cape Henrietta Maria, and Akimiski Island (R. Rockwell pers. comm. 1998). Trophic cascade is essentially the collapse of an existing food chain indicating that the ecosystem is unable to support its inhabitants. Impacts associated with trophic cascade are indicative that MCLG populations have exceeded the carrying capacity of much of their breeding habitat. Impacts such as a decline in biological diversity and physiological stress, malnutrition, and disease in goslings have been documented and observations of such impacts are increasing. Additional observations in areas north of Hudson Bay on Southampton and Baffin Islands, northwest in the Queen Maud Gulf region, and south off the west coast of James Bay on Akimiski Island also suggest similar habitat degradation patterns from expanding colonies of MCLG. Batt (1997) reported the rapid expansion of existing colonies and the establishment of new colonies in the central and eastern arctic. In 1973, for example, Canadian Wildlife Service data indicated that approximately 400,000 light geese nested on West Baffin Island. In 1997, approximately 1.8 million breeding adults were counted. Similar colony expansions have been reported for the Queen Maud Gulf region and Southampton Island. Rapid colony expansion must be halted and the populations must be reduced to prevent further habitat degradation and to protect the remaining habitat upon which numerous wildlife species depend.

Breeding Habitat Status

MCLG breeding colonies occur over a large area encompassing eastern and central portions of Northern Canada. Habitat degradation by MCLG has been most extensively studied in specific areas where colonies have expanded exponentially and exhibit severe habitat degradation. The Hudson Bay Lowlands salt-marsh ecosystem, for example, lies within a 135,000 acre narrow strip of coastline along west Hudson and James Bays and provides important stopover sites for numerous migratory bird species. Of the 135,000 acres of habitat in the Hudson Bay Lowlands, 35% is considered to be destroyed, 30% is damaged, and 35% is overgrazed (Batt 1997). Habitats currently categorized as ''damaged'' or ''overgrazed'' are moving and will continue to move into the ''destroyed'' category if goose populations continue to expand. Accelerated habitat degradation has been observed on Southampton and Baffin Islands and appear to be following the same pattern as documented in the Hudson Bay Lowlands. Current research efforts are underway to confirm observations of habitat degradation by MCLG in other areas.

Migration and Wintering Habitat Conditions and Degradation

There is no evidence to support that wintering habitat for MCLG is threatened or that it may limit population growth. Presently, there are approximately 2.25 million acres of rice fields in Texas, Louisiana, and Arkansas, in addition to the millions of acres of cereal grain crops in the Midwest. Consequently, food availability and suitable wintering habitat are not limiting MCLG during the migration and wintering portions of the annual cycle.

Summary of Environmental Consequences of Taking No Action

At each site they occupy, MCLG will continue to degrade the plant communities until food and other resources are exhausted, forcing yet more expansion. The pattern has been, and will continue to be, that as existing nesting colonies expand, they exploit successively poorer quality habitats, which are less able to accommodate them and which become degraded more

quickly. Eventually, the coastal salt-marsh communities surrounding Hudson Bay and James Bay will become remnant with little chance of recovery as long as MCLG populations remain high and for some time after it declines from natural causes, if they do. The functioning of the whole coastal ecosystem, from consolidation of sediments by colonizing plants to provision of suitable habitats for invertebrate and vertebrate fauna, will be detrimentally and possibly irrevocably altered. Similar conditions will likely come to prevail at selected non-coastal areas where MCLG have occupied most of the suitable nesting habitats. As many as 30 other avian species, including American wigeon, Northern shoveler, stilt sandpiper, Hudsonian godwit, and others, that utilize those habitats have declined locally, presumably due to habitat degradation by MCLG. Other species, such as Southern James Bay Canada geese, a species of management concern, that breed on nearby Akimiski Island and numerous other waterfowl species that migrate and stage with MCLG, have been and will continue to be negatively impacted. Arctic mammalian herbivores will also be impacted as the vegetative communities upon which they depend become depleted. Due to the rapidly expanding populations and the associated ecological impacts identified, we have concluded that MCLG populations have become seriously injurious to themselves and other migratory birds, their habitat and habitat of other migratory birds.

We expect that MCLG populations will continue to grow at least 5% annually, resulting in more severe and widespread ecological impacts. Although several factors influence population dynamics, the greatest single factor in the populations' increase is high and increasing adult survival rates (Rockwell et al. 1997b). Therefore, removing adults from the populations is the most effective and efficient approach in reducing the populations. Experts feel that breaking eggs and other non-lethal techniques have been determined to be ineffective in significantly reducing the populations within a reasonable time to preserve and protect habitat (Batt 1997).

We have attempted to curb the growth of MCLG populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Treaty. However, due to the rapid rise in MCLG numbers, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested), has declined despite evidence that the number of geese harvested has increased (USFWS 1997b). The decline in harvest rate indicates that the current management strategies are not sufficient to stabilize or reduce population growth rates.

We realize that current MCLG management policies need to be re-examined and believe that alternative regulatory strategies designed to increase MCLG harvest, implemented concurrently with habitat management and other non-lethal control measures, have the potential to be effective in reducing MCLG populations to levels that the remaining breeding habitat can sustain. We prefer to implement alternative regulatory strategies designed to increase MCLG harvest afforded by the Migratory Bird Treaty and avoid the use of more drastic population control measures. More direct population control measures such as trapping and culling programs may be necessary if the current proposed action is not successful. Should the proposed action be unsuccessful in five years, we will consider more direct population control measures to reduce MCLG.

We restrict the scope of this proposed rule to Mid-continent populations of light geese (MCLG): Mid-continent and Western Central Flyway lesser snow geese (*Chen caerulescens caerulescens*) and Ross' geese (*C. rossi*) and the United States portions of the Central and Mississippi Flyways (primarily Alabama, Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming) where they migrate, stage, or winter. Evidence exists to support the conclusion that MCLG migrate, stage, and winter in these areas and breed in the arctic and subarctic areas that are experiencing severe habitat degradation.

We are concurrently proposing an additional but separate population reduction strategy. In addition to this proposed rule to amend 50 CFR part 21, we are also proposing to amend 50 CFR part 20 to authorize the use of new hunting methods to harvest MCLG. That proposed rule would authorize States to allow the use of new hunting methods to harvest MCLG during a light-goose only season when all other migratory bird hunting seasons are closed. The proposal is also in the nature of a proposed rule and the notice and request for comments is published in this issue of the **Federal Register**.

We do not expect the second proposed action (amendment to 50 CFR part 20) implemented alone to achieve our overall management objective which is to reduce MCLG populations such that the December index falls within 800,000 and 1.2 million birds. The success of that strategy will hinge upon State participation, hunter participation, and hunter effectiveness. If a State does not participate, then its hunters will not be able to participate, decreasing the program's potential. We do not expect some States to participate in that proposed action due to the infeasibility of implementing the action when all other migratory bird hunting seasons are closed. MCLG migrate through northern and Mid-latitude States in the fall, however, the geese typically do not reach some of those States prior to 10 March during spring migration. For those States to be able to utilize the second proposed action, they would have to close all other migratory bird hunting seasons in the fall, which is highly unlikely. Conversely, many migratory bird hunting seasons in the southern States close prior to 10 March. Therefore, it is much more feasible for southern States to implement that proposed action by establishing a light-goose only season when all other migratory bird seasons are closed. We are proposing this proposed action (conservation order) in order to maximize the overall program's potential and obtain our management objective within a reasonable time-frame to avoid the use of more direct population control programs. This proposed action, conservation order, will allow northern States to participate in this effort and enable them to harvest MCLG during spring migration, particularly after 10 March. Harvest projections for the second proposed action (amendment 50 CFR part 20) are rolled into the harvest projections for this proposed action (conservation order). Harvest projections for the second proposed action would not be in addition to the harvest projections for this proposed action.

Proposed Conservation Order for MCLG

We propose to establish a new subpart in 50 CFR part 21 for the management of overabundant MCLG populations. Under this new subpart, we propose to establish a conservation order specifically for the control and management of MCLG. Conditions under the conservation order require that participating States inform all participants acting under the authority of the conservation order of the conditions that apply to the proposed amendment.

Under the authority of this proposed rule, States could initiate aggressive

harvest management strategies with the intent to increase MCLG harvest without having to obtain an individual permit, which will significantly reduce administrative burden to the State and Federal governments. A permit process would slow efforts to reduce the populations and prolong habitat degradation on the breeding grounds. This proposed rule will enable States to use hunters to harvest MCLG, by shooting in a hunting manner, inside or outside of the regular open migratory bird hunting season frameworks. States could maximize the opportunity to increase harvest of MCLG by implementing this proposed action beyond 10 March, where historically States have been limited by hunting season framework closing dates to take migratory birds. In order to minimize or avoid take of non-target species, States may implement this proposed action only when all migratory bird hunting seasons are closed. It is expected that this proposed action will facilitate other protection and recovery efforts. This proposed rule would further result in biologically sound and more cost-effective and efficient overabundant MCLG management and could preclude the use of more drastic, direct population control measures such as trapping and culling programs. Although the desired goal is to significantly reduce overabundant MCLG populations, we believe that this proposed rule will not threaten the long-term status of MCLG populations or threaten the status of other species that could be impacted through the implementation of this proposed rule. Evaluation and monitoring strategies are in place to assess the overall impacts of this proposed action on MCLG harvest and impacts to non-target species that may be affected by the implementation of this proposed action.

Summary of Environmental Consequences of Proposed Action

MCLG Populations and Associated Habitats

We project that we will harvest two million MCLG within three years without the use of this proposed action based on current MCLG harvest trends. Under certain assumptions, our most liberal estimate projects that we can expect to harvest an additional three million MCLG within three years of implementation of this proposed action bringing the total harvest to five million MCLG within three years of implementation of this proposed action. Once the December index falls within recommended management guidelines (800,000 to 1.2 million birds), then the proposed amendment to 50 CFR part 21 will be revoked.

The impact is expected to be regional within the Central and western Mississippi Flyway States that choose to utilize the proposed action. Since the proposed action may take place between 11 March and 31 August, we expect MCLG take to increase among Mid-latitude and northern States according to migration chronology. Increased harvest will be further facilitated by the use of additional hunting methods (electronic callers and unplugged shotguns) authorized by a State under the authority of this proposed rule. Although we can expect the additional hunting methods to be effective in increasing harvest per hunter, there is no precedent to guide us in determining to what degree they will be effective. It is equally difficult to ascertain to what degree the public will participate in the implementation of this proposed action, which will influence its effectiveness. However, with certain assumptions, we may project an increase in harvest using existing harvest data.

Several assumptions must be established before projecting the effect of the proposed action on harvest. We are assuming that all affected States will act under the authority of this proposed action and will allow all new hunting methods authorized in this proposed rule (electronic callers and unplugged shotguns), including the utilization of the maximum number of days available after the regular light-goose season. We are also assuming that current MCLG hunter numbers will not decrease and that the new methods authorized in this proposed rule, if used, will increase hunter effectiveness and overall harvest. We do not assume that all MCLG hunters will participate in the implementation of this proposed action and of those that do, we do not assume that all will increase their effectiveness by using new hunting methods. We are assuming that 25% of the MCLG hunters will use the new methods and will increase his/her effectiveness in harvesting MCLG.

States that have MCLG after 10 March may choose not to harvest MCLG after 10 March. Of those that do, the number of days each State may harvest outside of their regular open light-goose season likely will vary. For purposes of this exercise, we are assuming MCLG harvest is consistent throughout the entire light-goose season and that all affected States will use the proposed action. It is important to note that the issue of just how additional days influences harvest of migratory birds continues to be extensively analyzed. In that respect, our projections regarding MCLG harvest are our best estimates based on the data that we have and represent a liberal estimate.

We determined, based on a linear regression analysis of historical harvest data, that harvest number of MCLG has increased approximately 31,600 MCLG per year for the last ten years. A simple linear regression of the harvest data represents our most conservative estimate because the analysis does not take into account other factors that may have influenced harvest such as the recent regulation changes for light geese. A more complex analysis will demonstrate that harvest number has actually increased at a faster rate since the bag and possession limits for light geese have been increased (USFWS 1998c). Today, more MCLG are harvested with fewer hunters and hunter participation in light goose hunting is increasing. Therefore, conservatively, we projected that harvest will increase 31,600 per year for the next 5 years.

In 1997–98, 602,800 MCLG were harvested in the affected States (AR, CO, IL, IA, KS, LA, MS, MO, MT, NE, NM, ND, OK, SD, TX, and WY). Combined with our projection that harvest will increase by 31,600 per year without any changes to hunting regulations, we can expect to harvest 634,400 MCLG in the 1998–1999 regular light goose season in those affected States. Under the assumptions stated above, we expect to harvest an additional 576,300 MCLG through the implementation of this proposed action (authorize electronic callers, unplugged shotguns, and additional days to harvest) bringing the total projected harvest to 1.2 million MCLG in the first year of implementation of this proposed action. These figures are based on increasing harvest number. Therefore, we expect this projected harvest to increase annually. We expect to harvest 1.8 million MCLG in the second year of implementation and 2.4 million in the third year of implementation.

Central and Mississippi Flyway Council management guidelines suggest that MCLG populations should rest between 800,000 and 1.2 million birds based on the December index (USFWS 1998b, Central and Mississippi Flyway Councils 1982). Batt (1997) estimate that the populations should be reduced by 50% by 2005. Based on the December index, that would suggest a reduction from approximately 3 million birds to approximately 1.5 million birds in the December index; a figure which coincides with the management guidelines determined by the Central and Mississippi Flyway Council. Therefore, our efforts will focus on a

goal similar to those documented. It is important to understand that the December index is not a population count. It is simply used to detect population growth trends by sampling a portion of a population. The reduction of MCLG will be carefully analyzed and assessed on an annual basis using the December index and other surveys to ensure that the populations are not over-harvested.

We expect an increase in MCLG harvest to facilitate other efforts, such as habitat management on the wintering grounds and increased harvest by Canadian aboriginals, to decrease MCLG numbers and relieve pressures on the breeding grounds. There is no evidence to suggest that the implementation of this proposed action will result in an over-harvest of MCLG. Once the December index reflects a number within the management guidelines mentioned above (800,000—1.2 million), the proposed action will be revoked and the methods authorized will no longer be used. It is improbable that the implementation of this proposed action will threaten the long-term status of MCLG populations because we will monitor the MCLG populations and act accordingly to avoid it by modifying or revoking the proposed action.

Other Species

An increase in harvest, and subsequently a decrease in MCLG numbers, is expected to relieve pressures on other migratory bird populations that utilize MCLG breeding and wintering grounds and other areas along the migration routes. It is expected to reduce the possibility that other species will be forced to seek habitat elsewhere or abandon unsuitable degraded habitat altogether, which could potentially result in decreased reproductive success of affected populations. We expect a significant decrease in MCLG populations to contribute to increased reproductive success of adversely impacted populations. Further, we expect that by decreasing the numbers of MCLG on wintering and migration stopover areas, the risk of transmitting avian cholera to other species will be reduced which will reduce the threat of a widespread avian cholera outbreak.

Socio-economic

Any action taken has economic consequences. Continued inaction is likely to result in ecosystem failure of the Hudson Bay Lowlands salt-marsh ecosystem and potentially other ecosystems as MCLG populations expand and exploit new habitats. Without more effective population control measures to curb the populations, the populations of MCLG are expected to continue increasing and become more and more unstable as suitable breeding habitat diminishes. As population densities increase, the incidence of avian cholera among MCLG and other species is likely to increase throughout the Flyways, particularly at migration stopover sites. Losses of other species such as pintails, white-fronted geese, sandhill cranes, and whooping cranes, from avian cholera may be great. This may result in reduced hunting, birdwatching, and other opportunities. It may also result in the season closures of adversely impacted migratory game birds such as white-fronted geese, sandhill cranes, and pintails. Goose damage to winter wheat and other agricultural crops will continue and worsen. Habitat damage in the Arctic will eventually trigger density-dependent regulation of the population which likely will result in increased gosling mortality and may cause the population to decline precipitously.

However, it is not clear when such population regulation will occur and what habitat, if any, will remain to support the survivors. Such a decline may result in a population too low to permit any hunting, effectively closing MCLG hunting seasons. The length of the closures will largely depend on the recovery rate of the breeding habitat which likely will take decades. Although the overall impact of closures of light-goose seasons in the Central and Mississippi Flyways that could result from continued degradation of the breeding habitat is small on a national scale, it would be concentrated where large flocks of geese stage and winter. As hunter services tend to be performed by people with low incomes, the impact of a closure would fall disproportionately on low income groups near goose concentrations. We expect the proposed action to reduce the risk of light-goose season closures in the Central and Mississippi Flyways and avoid a $70 million loss in output and reduce the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies.

Public Comments Received

On April 6, 1998, we issued in the **Federal Register** (63 FR 16819) a notice of intent announcing that we would develop a draft Environmental Assessment to examine alternative regulatory strategies to reduce MCLG populations. This notice invited public comment on possible regulatory alternatives. The notice also advised the public that the draft Environmental Assessment along with a proposed rule would be published in the **Federal Register** later this year for public review and comment. As a result of this invitation for public comment, 247 comments consisting of 1 from a Federal agency, 8 from State wildlife agencies, 7 from private organizations, 1 from a Flyway Council, 115 from private citizens, and 115 from people who signed a petition were received. Comments were generally dichotomized by two key points of concern.

To summarize, 186 comments were supportive of our intent to examine alternative regulatory strategies to reduce the MCLG population. These commenters agreed that there was a problem and that the resolution should entail reduction by lethal means and supported the use of additional methods to increase take of MCLG. Comments in support of such action were received from 1 Federal agency, 8 State wildlife agencies, 1 Flyway Council, 5 private conservation agencies, 94 private citizens, and 77 from people who signed a petition. Conversely, 59 comments received were in opposition to the Service's intent to reduce MCLG populations by use of lethal means either because they believe it is not scientifically justified to reduce the populations or attempts to do so would be inhumane. Instead, these commenters offered two non-lethal recommendations to reduce the populations: (1) Hazing adults off nests and (2) egging (destroying nests) on the breeding grounds. Comments in support of no action or non-lethal action were received from 2 private animal welfare agencies, 19 private citizens, and 38 from people who signed a petition. Additionally, 2 comments were received in support of reducing the population by use of lethal means, however, recommended use of Federal wildlife agency programs such as trapping and culling.

Service Response: We are also opposed to the inhumane treatment of any birds and we do not believe that increasing take of MCLG by providing additional opportunities or methods for take of MCLG is inhumane. We also prefer non-lethal control activities, such as habitat modification, as the first means of resolving this issue. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are sometimes necessary to increase the effectiveness of non-lethal management methods. Further, MCLG breed in remote locations in the arctic and

subarctic regions of Northern Canada. Implementing control activities in those areas is cost-prohibitive and dangerous. Instead, we feel that providing States with additional opportunity and means to increase take of MCLG while implementing non-lethal control measures concurrently is the most efficient and feasible short-term solution. We will continue to work jointly with the Canadian Wildlife Service to reduce MCLG in both the United States and in Canada.

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NEPA Considerations

We have prepared a draft Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, in connection with this proposed regulation. The EA is available for public review at the above address.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of (critical) habitat . . .'' Consequently, we initiated Section 7 consultation under the ESA for this proposed rulemaking. Completed results of our consultation under Section 7 of the ESA may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management at the above address.

Regulatory Flexibility Act, Executive Order 12866, and Executive Order 12630

The economic impacts of this proposed rulemaking will fall disproportionately on small businesses because of the structure of the waterfowl hunting related industries. The proposed regulation benefits small businesses by avoiding ecosystem failure to an ecosystem that produces migratory bird resources important to American citizens. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. We expect the proposed action to reduce the risk of light-goose season closures in the Central and Mississippi Flyways subsequently avoiding a $70 million loss in output and reducing the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies. We have determined that a Regulatory Flexibility Act Analysis is not required. Migratory bird regulations are recognized as exempt from takings implication assessment under E.O. 12630. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act and Information Collection

The collection of information described below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). We will not conduct or sponsor any information collection until approved by OMB and a final regulation is published, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number. The proposed information collection will be used to administer this program and, particularly in the assessment of impacts alternative regulatory strategies may have on MCLG and other migratory bird populations. The information collected will be required to authorize State wildlife management agencies

responsible for migratory bird management to take MCLG within the guidelines provided by the Service. The annual number of State participants is expected to be 17. The reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the collection of information, yielding an annual burden of 510 hours.

BURDEN ESTIMATES FOR REPORTING REQUIREMENTS FOR THE CONSERVATION ORDER TO REDUCE MID-CONTINENT POPULATIONS OF LIGHT GEESE

Type of report	Number of reports annually	Avg. time required per report (minutes)	Burden hours
General Take or Removal*	17	1,800	510

*General take or removal includes authorized human-related mortality.

We expect a maximum of 17 annual reports per year from all participating States. We estimate that each annual report will require about 6 hours to complete, therefore, the burden assumed by the participants is 102 hours or less.

Comments are invited from you on: (1) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, 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 those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information collection technology. Comments and suggestions on the requirements should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, US Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW., Washington DC 20204. A copy should also be sent directly to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW., Washington, DC 20204 or electronically to mullinR@fws.gov.

Unfunded Mandates

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act (2 U.S.C. 1502 et seq) that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule will not ''significantly or uniquely'' affect small governments. No governments below the State level will be affected by this rule. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. This rule has been reviewed by the Office of the Solicitor. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. It is not anticipated that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Public Comment Invited

The policy of the Department of the Interior is, whenever practical, to afford you the opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposal to the location identified in the address section above. Specifically, we invite comment from affected States regarding the feasibility in implementing the proposed rule within the conditions provided. Comments must be received on or before January 8, 1998. Following review and consideration of the comments, we will issue a final rule.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' (50 CFR 21.60) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to '' Office of Regulatory Affairs, Department of the Interior, room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend parts 20 and 21, of the subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742a–j.

§ 20.22 [Amended]

2. In Section 20.22, the phrase ''except as provided in part 21'' is added following the word ''season''.

PART 21—[AMENDED]

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Subpart E, consisting of Section 21.60, is added to read as follows:

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation Order for Mid-continent light geese.

Any State agency responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, lesser snow and Ross' geese (Mid-continent light geese) in Alabama, Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Provided that:

(a) Persons who take Mid-continent light geese under this section may not sell or offer for sale those birds nor their plumage, but may possess, transport, and otherwise properly use them.

(b) Persons acting under the authority of this section must permit at all reasonable times including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and must promptly furnish whatever information an officer requires concerning the operation.

(c) Nothing in this section authorizes the take of Mid-continent light geese contrary to any State laws or regulations; and none of the privileges granted under this section may be exercised unless persons acting under the authority of the conservation order possesses whatever permit or other authorization(s) as may be required for such activities by the State concerned.

(d) Activities conducted under this section may not affect endangered or threatened species as designated under the Endangered Species Act.

(e) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, re-opening, or extending any open hunting season contrary to any regulations promulgated under section 3 of the Migratory Bird Treaty Act.

(f) Control activities may be conducted only when all migratory bird hunting seasons are closed.

(g) Control measures employed through this section may be implemented only between the hours of ½ hour before sunrise to ½ hour after sunset.

(h) Nothing in this section may limit or initiate management actions on Federal land without concurrence of the Federal Agency with jurisdiction.

(i) States must designate participants who must operate under the conditions of this section.

(j) States must inform all participants of the requirements/conditions of this section that apply.

(k) States must keep records of activities carried out under the authority of this section, including the number of Mid-continent light geese taken under this section, the methods by which they were taken, and the dates they were taken. The State must submit an annual report summarizing activities conducted under this section on or before August 1 of each year, to the appropriate Assistant Regional Director—Refuges and Wildlife (see § 10.22).

(l) Persons acting under the authority of this section may take Mid-continent light geese by any method except those prohibited in this section. No persons may take Mid-continent light geese:

(1) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(2) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the person a means of concealment beneath the surface of the water;

(3) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(4) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased: Provided, That a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power;

(5) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of wild migratory waterfowl;

(6) By means or aid of any motordriven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird;

(7) By the aid of baiting, or on or over any baited area. As used in this paragraph, ''baiting'' means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and ''baited area'' means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of Mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(8) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with 1 percent residual lead) shot, or such shot approved as nontoxic by the Director and identified in 50 CFR 20.21(j).

(m) The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that there no longer exists a serious threat of injury to the area or areas involved, we will publish immediately a notice of intent to revoke the conservation order in the **Federal Register**.

Dated: October 30, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–29954 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 103098C]

RIN 0648–AJ17

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment to the Fishery Management Plans of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to fishery management plans; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted for review and approval a generic amendment to the fishery management plans of the Gulf of Mexico that designates essential fish habitat (EFH). Written comments are requested from the public.

DATES: Written comments must be received on or before January 8, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the generic amendment, which includes an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 727–228–2815; Fax: 727-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 et seq.) requires each regional fishery management council to submit any fishery management plan (FMP) or amendment to the Secretary of Commerce for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment. Therefore, NMFS solicits comments on the approval, disapproval, or partial approval of this generic amendment designating EFH in the Gulf of Mexico.

Section 303(a)(7) of the Magnuson-Stevens Act requires that any FMP describe and identify EFH for the fishery, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. Section 305(b)(1)(A) and (B) of the Magnuson-Stevens Act require that the regional fishery management councils submit, by October 11, 1998, FMP amendments to identify and describe EFH for species under management.

NMFS published guidelines to assist regional fishery management councils in the description and identification of EFH, the identification of adverse impacts on EFH, and the identification of actions required to conserve and enhance EFH (62 FR 66531, December 19, 1997). The NMFS guidelines encourage ecosystem approaches to protecting and conserving EFH. Ecological roles of the managed species (i.e., prey, competitors, trophic links within foodwebs, and nutrient transfer between ecosystems) should be considered when identifying EFH. The guidelines also specify that sufficient EFH be protected and conserved to support sustainable fisheries and managed species' contribution to a healthy ecosystem.

The generic amendment designates EFH for species included in all seven of the Council's FMPs. EFH is identified and described based on areas where various life stages of 26 selected managed species and the coral complex commonly occur. The Council selected these 26 species because they are considered to be ecologically representative of the remaining species in the FMPs. The selected species are: Shrimp (brown shrimp, white shrimp, pink shrimp, royal red shrimp); red drum; reef fish (red grouper, gag grouper, scamp grouper, black grouper, red snapper, vermilion snapper, gray snapper, yellowtail snapper, lane snapper, greater amberjack, lesser amberjack, tilefish, and gray triggerfish); coastal migratory pelagic species (king mackerel, Spanish mackerel, cobia, dolphin, bluefish, little tunny); stone crab; spiny lobster; and the coral complex.

The selected species represent about a third of the species under management by the Council. EFH for the remaining managed species will be addressed in future FMP amendments, as appropriate.

EFH is identified based on where the individual managed species commonly occur. Collectively, these species commonly occur throughout all of the marine and estuarine waters of the Gulf of Mexico. For purposes of this generic EFH amendment, EFH is separated into estuarine and marine components. Collectively, EFH for the estuarine component includes all estuarine waters and substrates (mud, sand, shell, rock, and associated biological communities), including subtidal vegetation (seagrasses and algae) and adjacent intertidal vegetation (marshes and mangroves). Collectively, EFH in marine waters of the Gulf of Mexico includes all marine waters and substrates (mud, sand, shell, rock, and associated biological communities) from the shoreline to the seaward limit of the exclusive economic zone.

The amendment also identifies: Threats to EFH from fishing and nonfishing activities; options to conserve and enhance EFH; and research needs. No management measures and, therefore, no regulations are proposed at this time. Fishing-related management measures to minimize any identified impacts are deferred to future amendments when the Council has adequate information to decide whether measures are practicable.

Comments received by January 8, 1999 will be considered in the approval/disapproval decision on the amendment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 3, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–29944 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981021264–8264–01; I.D. 092998A]

[RIN 0648–AL29]

Fisheries of the Exclusive Economic Zone Off Alaska; Season and Area Apportionment of Atka Mackerel Total Allowable Catch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would divide the Atka mackerel total allowable catch (TAC) specified for the Aleutian Islands Subarea into two seasonal allowances; reduce the percentage of Atka mackerel TAC taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the Aleutian Islands Subarea; and extend the seaward 20 nautical miles (nm) no-trawl zone around the Seguam and Agligadak rookeries in the Eastern District of the Aleutian Islands into a year round closure. The purpose of this action is to avoid significant fishery-induced localized depletions of Atka mackerel, a primary prey species for Steller sea lions in the Aleutian Islands and to avoid potential jeopardy to the continued existence of Steller sea lion populations and their critical habitat through excessive removal of prey. This action is intended to further the conservation goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments on the proposed rule must be received no later than December 9, 1998.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action are available from NMFS at the same address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228, or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) pursuant to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP is implemented by regulations appearing at 50 CFR part 679 issued under the authority of the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Purpose and Need for Action

In 1990, NMFS designated the Steller sea lion (Eumetopias jubatus) as a threatened species under the Endangered Species Act of 1973 (ESA). The designation followed severe declines throughout much of the Gulf of Alaska and Aleutian Islands region. In 1993, NMFS defined critical habitat for the species to include the marine areas within 20 nm of major rookeries and haulouts of the species west of 144° W. long., as well as major foraging areas. In 1997, NMFS recognized two separate populations and reclassified the western population (west of 144° W. long.) as endangered. The estimated number of Steller sea lions in the western population has declined by more than 80 percent since the mid-1960s. The ultimate cause or causes of the decline are unknown, but lack of available prey is believed to be an important contributing factor.

NMFS is the lead agency responsible for the recovery and conservation of the Steller sea lion. As such, it has periodically consulted with itself on the FMP and on the potential effects of the various groundfish fisheries on Steller sea lions. Since listing the Steller sea lion as threatened in 1990, NMFS has expressed concern in three subsequent biological opinions (the products of ESA section 7 consultations) that fisheries may reduce sea lion foraging success by causing changes in prey composition, age/size composition of available prey species, or localized depletions of prey.

Atka mackerel are an important prey species for Steller sea lions. In a recent study, NMFS researchers found that Atka mackerel were the most common prey item (based on split-sample frequency of occurrence) for Steller sea lions in portions of the Central and Western Districts of the Aleutian Islands Subarea. These results were based on scats collected in summer months and assumed to be primarily from adult females. Atka mackerel were also found in 84 percent of 241 Steller sea lion scats collected in 1989–92 in the Aleutian Islands (92 percent in the Central Aleutian Islands).

Recent statistical evaluations of catch per unit effort (CPUE) at various sites in the 1990s have indicated that the Atka mackerel fishery has led to localized depletions of Steller sea lion prey, thereby increasing evidence of competition. Thus, the first of two main objectives of this proposed rule is to modify the management of the Atka mackerel fishery to avoid such depletions.

The second objective is based on the statutory requirement of the ESA that Federal actions within the critical habitat of a listed species not jeopardize the continued existence of populations of those species or adversely modify their critical habitat. The single most important feature of critical habitat for the Steller sea lion is its prey base. Areas designated as critical habitat for this species must include sufficient food to meet the energetic demands of a stable and healthy sea lion population. Thus, the availability of prey in critical habitat is a matter of considerable concern, particularly because lack of available prey may have contributed to the decline of the western population or may be impeding its recovery.

Since 1977, the portion of Atka mackerel catch taken annually within Steller sea lion critical habitat has varied from 15 percent to 98 percent, with an average of 71 percent. A marked increase in the annual catch in the 1990s and the high percent of the catch generally taken within Steller sea lion critical habitat have resulted in a marked increase in the tonnage of Atka mackerel taken from areas considered essential to the recovery and conservation of the Steller sea lion, again increasing concerns that the fishery competes with Steller sea lions. The point at which fishery removals of prey from critical habitat jeopardize the continued existence of Steller sea lion populations or result in adverse modification of critical habitat is not clear. In spite of such uncertainty, the ESA requires that a judgment be made on the basis of the best available scientific and commercial data. To prevent potential jeopardy to the continued existence of Steller sea lion populations and adverse modification of their critical habitat, this proposed rule seeks to reduce the proportion of the annual Atka mackerel catch taken from within designated critical habitat.

The ultimate cause or causes of the decline of the western population of Steller sea lions remain uncertain.

However, NMFS believes that an important contributing factor may be the lack of available prey of which Atka mackerel are an important component. NMFS is responsible for ensuring that the Atka mackerel fishery does not jeopardize the continued existence of Steller sea lion populations or adversely modify their critical habitat. Given the apparent importance of Atka mackerel in the diet of Steller sea lions, particularly in the central and western Aleutian Islands, careful management of the Atka mackerel fishery is essential to ameliorate potential impacts of the fishery on Steller sea lions and their critical habitat.

At its June 1998 meeting, the Council considered this information and the analysis prepared by NMFS in support of this action and recommended that NMFS proceed with the development of regulations to reduce competition between the Atka mackerel fishery and Steller sea lions. Six alternatives were presented to the Council for consideration. The alternative adopted by the Council and set out in this proposed rule would (1) divide the Atka mackerel TACs specified for each subarea and district of the BSAI into two equal seasonal allowances, (2) reduce the percentage of Atka mackerel TAC taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the Aleutian Islands Subarea, and (3) extend the seasonal 20 nm no-trawl zone around the Seguam and Agligadak rookeries in the Eastern District of the Aleutian Islands into a year-round closure.

Elements of the Proposed Rule

Atka Mackerel Season Split

To address the issue of localized depletions of Steller sea lion prey, this action would establish two Atka mackerel fishing seasons: The A season would run from 0001 hours, Alaska local time (A.l.t.), January 1 through 1200 hours, A.l.t., April 15 and the B season would run from 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1. The TAC specified for the Atka mackerel fishery after subtraction of the jig gear allocation and reserves would be divided equally into A and B season allowances during the annual specification process. This split is proposed as an effective means to ameliorate concerns about localized depletion while still providing reasonable opportunity to the fishing industry to harvest Atka mackerel without significantly increased operational costs. The jig gear allocation and Community Development Quota (CDQ) would not be divided into seasonal allowances because jig gear and CDQ fishing occur outside the time period of the open access trawl fishery, and the jig gear and CDQ fisheries are too small, widely dispersed, and slowly paced to lead to localized depletions of Atka mackerel.

Progressive Reduction of Catch Within Critical Habitat

This action would prohibit trawling for groundfish within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the Aleutian Islands when NMFS determines that the harvest of a seasonal allowance of Atka mackerel within a district reaches the following percentage identified for each year and district:

Year	Western (543)	Central (542)
1999	65	80
2000	57	67
2001	48	46
2002 and after	40	40

A critical habitat trawl closure within a district would remain in effect until NMFS closes Atka mackerel to directed fishing within the same district. Steller sea lion critical habitat areas in the Aleutian Islands are defined in Table 1, Table 2, and Figure 4 of 50 CFR part 226. The purpose of this action is to ensure that the percentage of Atka mackerel catch taken inside critical habitat does not exceed the percentages identified above. CDQ groups would be limited to the same percentages of Atka mackerel catch taken inside critical habitat. However, critical habitat closures would be imposed on CDQ groups individually when their percentage of Atka mackerel CDQ harvest reaches the limit for each year and district.

Extension of 20 nm No-Trawl Zones

This action also would extend the 20 nm no-trawl zones around the Seguam and Agligadak rookeries in the Eastern District of the Aleutian Islands into a year round closure. At present, these rookeries are protected year-round by a 10 nm no-trawl zone, and from January 1 through April 15 by a 20 nm no-trawl zone. The current 10 and 20 nm no-trawl zones are set out in Table 5 to part 679.

Additional Actions To Be Taken in the Future

Vessel Monitoring System (VMS)

The Council recommended that NMFS establish a VMS requirement to monitor the activity of vessels fishing with trawl gear after critical habitat areas are closed. NMFS hopes to implement VMS requirements for the Atka mackerel fishery prior to the start of the 1999 Atka mackerel B season, which would open on September 1, 1999. Until then, enforcement of the critical habitat closures contained in this rule would be accomplished through traditional methods, such as Coast Guard overflights and reports from vessels and on board observers.

The Council also requested that NMFS conduct an annual review of the impact and effectiveness of the management measures outlined above, i.e., the Atka mackerel season split, the progressive reduction of catch within critical habitat, the extension of 20 nm no-trawl zones, and the VMS, and develop a research plan to determine the effects of these management measures by area. NMFS intends to report annually to the Council on the impact and effectiveness of these management measures. Ongoing research on the effectiveness of these and other Steller sea lion protection measures is a critical element of NMFS' recovery program for Steller sea lions.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). The analysis made the following conclusions with respect to impacts on small entities:

Business entities affected directly. The actions being considered for the BSAI Atka mackerel fishery would have direct effects on fewer than 15 fishing vessels all of which are expected to be factory trawlers. In 1997, 12 factory trawlers participated in the BSAI Atka mackerel fishery and eight of these vessels accounted for 81 percent of the retained catch in that fishery. All of the factory trawlers in the Atka mackerel fishery are owned by seafood companies with annual receipts that exceed the $3 million small entity threshold by the Small Business Administration for fish harvesting businesses. The combined annual receipts for the companies involved in the Atka mackerel fishery are not known. However, based on the value of fish these companies harvest in Alaska, and the annual reports of the publically held companies, the annual worldwide receipts for the companies involved in the Atka mackerel fishery is estimated to range from $5 million to over $3 billion. In 1998, 1 percent of the Atka mackerel TAC in Area 541 (127 mt) was allocated to vessels using jig gear. However, as of September 12, 1998, NMFS has not received any Atka mackerel catch reports by

vessels using jig gear in Area 541 and the entire 127 mt TAC allocation remains unharvested. Up to 10 vessels using jig gear had expressed interest in fishing for Atka mackerel in Area 541 and all of these vessels are small entities. However, the preferred alternative would exempt vessels using jig gear from the A-B season split, critical habitat restrictions, and VMS requirements. Therefore, all small entities using jig gear to fish for Atka mackerel would be unaffected by the proposed action.

Small communities and groups affected directly. Because, very little BSAI Atka mackerel is delivered to on-shore processors and because the principal participants in this fishery are not residents of Alaska fishing communities, with the exception of the CDQ communities, few small communities would be affected directly. With the expansion of the CDQ program to include all BSAI groundfish and crab, the 50 plus CDQ communities would be affected by actions that affect the Atka mackerel CDQ. However, the effects on these communities are not expected to be significant because Atka mackerel is expected to account for less than 5% of the value of the CDQs to these communities, none of the actions would eliminate all of the value of the Atka mackerel CDQs, and the CDQs are but one source of income for these communities. To further reduce the potential impacts of this action on CDQ groups, the Council's preferred alternative would exempt CDQ groups from the A-B season split so that CDQ groups are not forced to fish small amounts of Atka mackerel CDQ during two separate time periods.

Business entities affected indirectly. A much larger number of entities would be affected indirectly if the proposed actions result in the factory trawlers, that have dominated the Atka mackerel fishery, switching effort from the Atka mackerel fishery to other groundfish fisheries. If the fishing capacity of the eight factory trawlers that were the core of the Atka mackerel fleet in 1997 were diverted to other fisheries, these vessels could take substantially larger shares of the catch in the BSAI rock sole, Pacific cod, flathead sole, or other flatfish fishery or the GOA flatfish fisheries. Much of any such increase in catch by the core Atka mackerel fleet would be at the expense of other factory trawlers in the BSAI and both catcher vessels and other factory trawlers in the GOA. In 1996, 67 factory trawlers participated in BSAI and GOA Pacific cod fisheries and 42 factory trawlers participated in the various BSAI and GOA flatfish fisheries. In 1996, 180 trawl catcher vessels participated in the Pacific cod fisheries of the BSAI and GOA and 62 trawl catcher vessels participated in the various flatfish fisheries of the BSAI and GOA. Due to inshore/offshore TAC allocations for Pacific cod in the GOA and TAC splits between catcher vessels and catcher processors in the BSAI, catcher vessels participating in the Pacific cod fishery will be unaffected if Atka mackerel factory trawlers shift into the Pacific cod fishery. However, catcher vessels fishing for flatfish in the BSAI and GOA could face impacts if effort shifts away from Atka mackerel as a result of this action. The extent to which these shifts may occur is impossible to quantify or predict.

Most of the factory trawlers operating in the BSAI and GOA Pacific cod and flatfish fisheries are owned by or affiliated with ''large'' entities. In addition, up to half of the catcher vessels fishing in the BSAI are believed to be owned by or affiliated with large entities. However, in a written comment to the Council submitted for this action, an industry representative for flatfish and Pacific cod factory trawlers indicated that more than 30 percent of the factory trawlers in the BSAI flatfish and Pacific cod fisheries expected 1998 annual gross revenues to be less than $3 million. NMFS does not have information to confirm or refute this figure. Furthermore, the ownership characteristics of these vessels has not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. Because NMFS cannot quantify the number of small entities that may be indirectly affected by this action, or quantify the magnitude of those effects, NMFS concludes that it is possible that this action could have a significant economic impact on a substantial number of small entities.

Measures taken to reduce impacts on small entities. The Council considered and adopted a series of exemptions to reduce the impacts of this action on small entities. The preferred alternative contains the following elements to reduce impacts on small entities: (1) Vessels using jig gear would be exempted from all aspects of the proposed action, (2) CDQ groups would be exempted from the A–B season split to prevent having to fish for small Atka mackerel CDQ amounts during two times of the year, and (3) vessels using hook-and-line gear would be exempt from the closure to fishing inside critical habitat. The critical habitat closures would affect vessels using trawl gear only, (4) both jig and hook and line vessels would be exempted from future VMS requirements for the Atka mackerel fishery.

As stated in the preceding paragraph and in the section entitled, ''Business entities affected directly,'' all small entities in the Atka mackerel fishery (jig boats) are exempt from all aspects of this proposed action. NMFS is not aware of additional alternatives that could further mitigate this action's economic impact on small entities.

NMFS initiated a formal section 7 consultation under the ESA for this action. A biological opinion is under preparation that will determine whether the fishing activities conducted under this rule are likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or to result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 3, 1998.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraphs (a)(8) and (c)(2)(ii)(A) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(8) *BSAI Atka mackerel*—(i) *Jig gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig-gear allocation will support the development of a jig-gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

(ii) *Other gears.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation and reserves, will be allocated to vessels using other authorized gear types.

(A) *Seasonal allowances.* The Atka mackerel TAC specified for each subarea or district of the BSAI will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) The interim specifications for pollock and Atka mackerel will be equal to the first seasonal allowance for pollock and Atka mackerel that is published in the proposed specifications under paragraph (c)(1) of this section.

* * * * *

3. In § 679.22, paragraphs (a)(7) and (a)(8) are revised to read as follows:

§ 679.22 Closures.

(a) * * *

(7) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof District*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b of this part.

(8) *Steller sea lion protection areas, Aleutian Islands Subarea*—(i) *10-nm closures.* Trawling is prohibited within 10 nm of each of the 17 Steller sea lion rookeries shown in Table 5a of this part.

(ii) *20-nm closures.* Trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b of this part.

(iii) *Western and Central Aleutian Islands critical habitat closures*—(A) *General.* Trawling is prohibited within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the AI (see Table 1, Table 2, and Figure 4 of 50 CFR part 226) when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in paragraph (a)(8)(iii)(B) of this section has been met.

(B) *Criteria for closure.* The trawl closures identified in paragraph (a)(8)(iii)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of Atka mackerel specified under § 679.20(a)(8)(ii)(A) reaches the following percentage identified for each year and district:

Year	Western (543) (percent)	Central (542) (percent)
1999	65	80
2000	57	67
2001	48	46
2002 and after	40	40

(C) *Duration of closure.* A Steller sea lion critical habitat area trawl closure within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

(D) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4 of 50 CFR part 226) for an eligible vessel listed on an approved CDP after the CDQ group has harvested the percent of the annual Atka mackerel CDQ specified for the year and district at paragraph (a)(8)(iii)(B) of this section.

* * * * *

4. In § 679.23, paragraph (e)(3) is redesignated as paragraph (e)(4) and a new paragraph (e)(3) is added to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, directed fishing for Atka mackerel with trawl gear in the Aleutian Islands Subarea is authorized only during the following two seasons:

(i) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 15;

(ii) *B season.* From 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., November 1.

* * * * *

5. In part 679, Table 5 is revised to read as follows: Table 5 to Part 679—Aleutian Islands Subarea Steller Sea Lion Protection Areas

Name of Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3–nm NO TRANSIT ZONES described at part 227.12(a)(2) of this title				
a. Trawling Prohibited Year-Round Within 10 nm:				
Yunaska Island	52°42.0′N	170°38.5′W	52°41.0′N	170°34.5′W.
Kasatochi Island	52°10.0′N	175°31.0′W	52°10.5′N	175°29.0′W.
Adak Island	51°36.5′N	176°59.0′W	51°38.0′N	176°59.5′W.
Gramp Rock	51°29.0′N	178°20.5′W		
Tag Island	51°33.5′N	178°34.5′W		
Ulak Island	51°20.0′N	178°57.0′W	51°18.5′N	178°59.5′W.
Semisopochnoi	51°58.5′N	179°45.5′E	51°57.0′N	179°46.0′E.
Semisopochnoi	52°01.5′N	179°37.5′E	52°01.5′N	179°39.0′E.
Amchitka Island	51°22.5′N	179°28.0′E	51°21.5′N	179°25.0′E.
Amchitka Is/Column Rocks	51°32.5′N	178°49.5′E		
Ayugadak Point	51°45.5′N	178°24.5′E		
Kiska Island	51°57.5′N	177°21.0′E	51°56.5′N	177°20.0′E.
Kiska Island	51°52.5′N	177°13.0′E	51°53.5′N	177°12.0′E.
Buldir Island	52°20.5′N	175°57.0′E	52°23.5′N	175°51.0′E.
Agattu Is./Gillion Pt	52°24.0′N	173°21.5′E		
Agattu Island	52°23.5′N	173°43.5′E	52°22.0′N	173°41.0′E.
Attu Island	52°54.5′N	172°28.5′E	52°57.5′N	172°31.5′E.
b. Trawling Prohibited Year-Round Within 20 nm:				
Seguam Island	52°21.0′N	172°35.0′W	52°21.0′N	172°33.0′W.
Agligadak Island	52°06.5′N	172°54.0′W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

[FR Doc. 98–29945 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 63, No. 216
Monday, November 9, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–99–01]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: December 30, 1998.

Time: 9:30 a.m.

Place: United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To elect officers, discuss the status of the flue-cured bale experiment, and other related matters for the 1999 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by December 21, 1998, and inform us of your needs.

Dated: November 3, 1998.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 98–29938 Filed 11–6–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AR–174
Crawford County Livestock Auction, Mountainburg, Arkansas

CA–188
Martella Livestock Market, Inc., Tipton, California

MT–122
Montana Livestock Company, Ramsey, Montana

MO–282
The Cow Palace, Inc., Sedgewickville, Missouri

SC–157
Rocking R, Inc., Laurens, South Carolina

TN–192
Morris Brothers Auction, Pikeville, Tennessee

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act. Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 3646, Room 3418–S, Washington, D.C. 20250, by November 24, 1998.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, D.C. this 2nd day of November 1998.

Michael J. Caughlin, Jr.,

Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 98–29899 Filed 11–6–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). It has been submitted to OMB under the emergency clearance procedures. The Department is requesting OMB approval by no later than November 16, 1998.

Agency: Office of the Secretary.

Title: Survey of Business Leaders Accompanying the Secretary on Trade Missions.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection—Emergency Submission.

Burden: 5 hours.

Number of Respondents: 100.

Avg. Hours Per Response: 3 minutes.

Needs and Uses: On every trade mission the Secretary of Commerce leads, a brief survey will be conducted assessing the participants' opinions and opportunities they see for the markets where the trade mission will be taken. This information will help the Secretary to communicate the participant's concerns and views as they look to increase business opportunities.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room

10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503 by no later than November 16, 1998.

Dated: November 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–29917 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–55–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Inspector General/Department of Commerce.

Title: Applicant for Funding Assistance.

Agency Form Number(s): CD–346.

OMB Approval Number: 0605–0001.

Type of Request: Extension of a currently approved collection.

Burden: 500 hours.

Number of Respondents: 400 (multiple responses).

Avg. Hours Per Response: 15 minutes.

Needs and Uses: This collection is used to assist program and grants administration officials in determining the responsibility, financial integrity and management principles of principal officers and employees of organizations, firms, or recipients which will be receiving grants, loan guarantees, etc. Through the ''name check'' process, the Office of Inspector General collects background information on key individuals and is used to determine if they have been convicted of, or are presently facing, criminal charges for fraud, theft, perjury, etc. This information is used in making funding decisions.

Affected Public: Businesses or other for-profit organizations, individuals, not-for-profit institutions, federal government, state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: November 3, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–29918 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–55–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–98]

Proposed Foreign-Trade Zone—Lancaster, CA; Extension of Public Comment Period

The comment period for the above case, submitted by the City of Lancaster, California, requesting authority for a new general-purpose zone in the Lancaster (Antelope Valley) area is further extended to December 4, 1998, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 3, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–29992 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–98]

Foreign-Trade Zone 41—Milwaukee, WI, Application for Subzone Status; Mercury Marine (Inc.) (Marine Propulsion Products) Fond du Lac and Oshkosh, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, requesting special-purpose subzone status for the marine propulsion products manufacturing facilities of Mercury Marine (Inc.), located in Fond du Lac and Oshkosh, Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 30, 1998.

The proposed subzone would consist of 11 total sites, 10 (totaling 2.5 million sq.ft., manufacturing/warehousing) of which are in Fond du Lac (Fond du Lac County): Site 1 (12 acres)—Plant 95, 325 Larsen Drive; Site 2 (9 acres)—Plant 4,98, 660 South Hickory Street; Sites 3 and 4 (29 acres)—Plant 4, 660 South Hickory Street; Site 5 (21 acres)—Plant 17, W6207 Pioneer Road, Site 6 (11 acres)—Plant 17A, 771 South Military Road; Site 7 (79 acres)—Plants 3, 10, 12, 15, 52/''Main Plant'', W6250 Pioneer Road; Site 8 (1 acre)—Adjacent south to Site 3 at Pioneer Road; Site 9 (2 acres)—Water Street Plant, along Fond du Lac River at Water Street; Site 10 (13 acres)—Plant 36, N7480 County Road UU. Site 11 (10 acres/100,000 sq.ft., warehouses)—Plants 33 and 64, located at 445–505 Marion Road in Oshkosh (Winnebago County), Wisconsin. The facilities (2,500 employees) are used to produce marine outboard and jet pump engines (up to 450 horsepower) for the U.S. market and export. The application indicates that foreign-sourced parts and materials comprise some 20 percent of the finished marine engines' material value, including: oil, alcohols, adhesives, plastic casings, adhesive sheets/plates, ethylene bags, packaging materials, rubber profiles/tubes/hoses/gaskets, belts, valves, ball/roller bearings, oil seals, antifreeze, articles of wood, paper books and labels, decals, twine, textile fabrics with PVC, fiberglass, iron or non alloy tubes/pipes/profiles/fittings, chain, fasteners, springs, wire/cable, base metal mountings, internal parts of marine engines, gears, ignition systems, electrical subcomponents, compasses, gauges, measuring and controlling instruments, starters, flywheels, pulleys, shafts, electric motors, propellers, electromagnetic couplings, electronic components, pumps, and filters (duty rates: free—9.8%).

FTZ procedures would exempt Mercury Marine from Customs duty payments on the foreign items used in production for export. On domestic shipments, the company would be able to choose the duty rates during Customs entry procedures that apply to finished marine engines (free, 2.7%) for the foreign inputs noted above. The application indicates that the savings from FTZ procedures would help

improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 8, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 25, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Room 596, 517 E. Wisconsin Avenue, Milwaukee, WI 53202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: October 30, 1998.

Dennis Puccinelli,

Acting Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 98–29853 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(27f)–45–98]

Foreign-Trade Zone 8—Toledo, OH, Redesignation of Foreign-Trade Subzone 8F

Based on a request by the Toledo-Lucas County Port Authority, grantee of FTZ 8, for a minor modification of the grant of authority for FTZ Subzone 8F at the BP Exploration & Oil Inc., refineries in Toledo and Lima, Ohio (Board Order 822, 61 FR 27048, 5/30/96), Subzone 8F—Site 2 (the Lima refinery site) is redesignated as Subzone 8G. The Lima refinery has been sold to Clark USA and will be operated separately. The authority for the site, now designated as Subzone 8G, would continue to be based on the FTZ Board's authorization in Board Order 822, including its special conditions and restrictions.

Dated: October 30, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–29852 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–98]

Foreign-Trade Subzone 167B—Polaris Industries, Inc.; Expansion of Manufacturing Authority (Internal-Combustion Engines) Osceola, Wisconsin

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Polaris Industries, Inc. (Polaris), operator of FTZ Subzone 167B, at the Polaris plant, Osceola, Wisconsin, requesting an expansion of the scope of manufacturing authority to include a new end product (motorcycle engines) and additional internal-combustion engine manufacturing capacity under FTZ procedures within Subzone 167B. It was formally filed on November 3, 1998.

Subzone 167B was approved by the Board in 1997 with activity granted for the manufacture of small internal-combustion engines for snowmobiles, personal water craft, all-terrain vehicles (Board Order 940, 62 FR 66601, 12–19–97).

Polaris has installed new manufacturing capacity at the Osceola plant (84 employees) used to produce a new model motorcycle engine (V-twin, 1,507 cc) and now requests that its FTZ manufacturing authority be extended to include the increased motorcycle engine capacity. The company plans to produce up to 20,000 motorcycle engines annually, which would be shipped to Polaris' Spirit Lake, Iowa, plant to equip motorcycles assembled there. The new engine manufacturing activity will involve casting, machining, finishing, and assembly using domestic and foreign materials and components.

The motorcycle engine production will utilize foreign-sourced pistons and cylinders (2.6% duty rate) (representing 5% of the finished engines' ex-plant value) and all other components from domestic sources.

FTZ procedures would exempt Polaris from Customs duty payments on the foreign components used in export activity (less than 5% of shipments). On its domestic sales, the company would be able to elect the duty rate that applies to finished engines (duty free) for the foreign components noted above. The application indicates that the savings from FTZ procedures help improve Polaris' international competitiveness.

The application has requested review under § 400.32(b)(1) of the FTZ Board regulations based on the previous Board approvals.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 24, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 8, 1999.)

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 3, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–29991 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822 A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Notice of Extension of Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for final results of antidumping duty administrative review.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Thomas Gilgunn, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0666 and (202) 482–0648 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are 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 19 CFR part 351 (1998).

Extension of Time Limits for Final Results

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. On September 25, 1997 (62 FR 50292), the Department initiated this antidumping administrative review covering the period August 1, 1996 through July 31, 1997.

Because of the complexity of certain issues, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the final results to December 17, 1998. This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 3, 1998.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–29996 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–557–805

Extruded Rubber Thread From Malaysia; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioner and three producers/exporters of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1996, through September 30, 1997.

We have preliminarily determined that sales have been made below the normal value by each of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Office of AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1997, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on extruded rubber thread from Malaysia (62 FR 51628).

In accordance with 19 CFR 351.213(b)(1), on October 20, 1997, the petitioner, North American Rubber Thread, requested an administrative review of the antidumping order covering the period October 1, 1996, through September 30, 1997, for the following producers and exporters of extruded rubber thread: Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd. (Heveafil), Rubberflex Sdn. Bhd. (Rubberflex), and Rubfil Sdn. Bhd. (Rubfil). On October 31, 1997, Filati, Heveafil, and Rubberflex also requested an administrative review.

In November 1997, the Department initiated an administrative review for Filati, Heveafil, Rubberflex, and Rubfil (62 FR 63069 (Nov. 26, 1997)) and issued questionnaires to each of these companies.

In February 1998, we received responses from Filati, Heveafil, and Rubberflex. We received no response from Rubfil. Because Rubfil did not respond to the questionnaire, we have assigned a margin to Rubfil based on facts available. For further discussion, see the ''Facts Available'' section, below.

In June and July 1998, we issued supplemental questionnaires to Filati, Heveafil, and Rubberflex. We received responses to these questionnaires in July, August, and September 1998.

From September through November 1998, the Department conducted verifications of the data submitted by Filati, Heveafil, and Rubberflex, in accordance with 19 CFR 351.307(b)(iv).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), 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 the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Facts Available

A. Use of Facts Available for Rubfil

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e); (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in November 1997. Because Rubfil did not respond to the Department's questionnaire, we must use facts otherwise available to determine Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 54.31 percent. We find that the rate of 54.31 percent, which was assigned in the prior administrative review, is sufficiently high as to effectuate the purpose of the facts available rule.

B. Corroboration of Secondary Information

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of this proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (*Fresh Cut Flowers*) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1994–1995 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for Filati, Heveafil and Rubberflex, as specified in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers). Based on the information on the record, no level of trade adjustment was warranted for any respondent. Although Filati claimed that the home market level was different, and more remote, than the level of trade of the CEP, we have found the levels of trade to be the same.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in its sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum

issued for the preliminary results of this review, dated November 2, 1998.

Constructed Export Price

For all U.S. sales by Filati, Heveafil, and Rubberflex, we used CEP, in accordance with section 772(b) of the Act. For Filati, we have treated sales shipped directly to the U.S. customer as CEP sales because we find that the extent of the affiliate's activities performed in the United States in connection with these sales is significant. *See* the Filati USA verification report at 4.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, and U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752,12758 (March 16, 1998) (*Thread Fourth Review*); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043, 54079 (Oct. 17, 1997) (*AFBs*).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Heveafil

In cases where Heveafil shipped merchandise directly from Malaysia to U.S. customers, we used the bill of lading date as the date of sale for these shipments, rather than the date of the U.S. invoice as reported. For these shipments, we find that there is a long lag time between the date of shipment to the customer and the date of invoice.

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses, repacking expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Regarding indirect selling expenses, we disallowed an offset claimed by Heveafil relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance the Department's practice. *See Thread Fourth Review* (63 FR 12758) and *AFBs* (62 FR 54079).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

C. Rubberflex

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the period of review (POR). Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COP)s in this review because the Department had disregarded sales below the COP for these companies in a previous administrative review. *See Thread Fourth Review*. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

Except as follows, we used the respondents' reported COP amounts to compute weighted-average COPs during the POR. Regarding the COP data reported by Filati, we found that, in certain instances, Filati reported multiple costs for a single control number. In those cases, we used the higher of the costs for purposes of the preliminary results.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at

prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* § 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(c)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the 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 given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

B. Heveafil

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act.

C. Rubberflex

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1996, through September 30, 1997:

Manufacturer/exporter	Percent margin
Filati Lastex Sdn. Bhd.	8.31
Heveafil Sdn. Bhd.	.....
Filmax Sdn. Bhd.	3.91
Rubberflex Sdn. Bhd	1.15
Rubfil Sdn. Bhd	54.31

Interested parties may request a hearing within 30 days of the publication of this notice. Any hearing, if requested, will be held 37 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which

will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total entered value of the examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Filati, Heveafil, Rubberflex, and Rubfil will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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)(1)) and 19 CFR 351.213.

Dated: November 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29850 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Notice of Postponement of Final Results of Antidumping Administrative Review: Gray Portland Cement and Clinker from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Krawczun, William Zapf or Richard Rimlinger, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0198, (202) 482–0180 or (202) 482–4477, respectively.

Postponement of Final Results of Review

On September 25, 1997, the Department of Commerce (the Department) initiated an antidumping administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (62 FR 50292). On September 10, 1998, we issued our preliminary results of review (63 FR 48471). The final results of review are currently due January 8, 1998. Due to an increase in case assignments, we transferred this case, on October 1, 1998, to another team of Department personnel for calculation of the final results. This transfer requires time for the newly assigned team to become familiar with the case. Also, the current final due date conflicts with several existing deadlines of the new team. For these reasons, we have determined that completion of the review within 120 days from the publication of our preliminary results of review is not currently practicable and, therefore, we are postponing the deadline for issuing these final results of review until no later than March 9, 1999.

This extension is in accordance with section 751(a)(2)(C) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(h)(2).

Dated: November 2, 1998.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–29997 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: We preliminarily determine that sales of certain helical spring lock washers from the People's Republic of China were made below normal value during the period October 1, 1996 through September 30, 1997. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or 482–2815, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 et. seq. *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296 (May 19, 1997).

Background

On October 19, 1993, the Department published the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) (58 FR 53914). The Department notified interested parties of the opportunity to request an administrative review of this order on October 2, 1997 (62 FR 51628). The

petitioner, Shakeproof Industrial Products Division of Illinois Tool Works, Inc., and the respondent, Zhejiang Wanxin Group Co. (ZWG) (also known as Hangzhou Spring Washer Plant), requested that the Department conduct an administrative review of ZWG. These requests were received on October 24 and 27, 1997, respectively. The notice of initiation of this administrative review was published on November 26, 1997 (62 FR 63069). On July 10, 1998, the Department extended the time limits for completion of the preliminary results in this proceeding until October 31, 1998 (*See* 63 FR 37328).

The Department is conducting this administrative review in accordance with Section 751 of the Act.

Scope of Review

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers the period from October 1, 1996 through September 30, 1997.

Verification

As provided in section 782(i) of the Act, we verified sales and factor information provided by ZWG in Xiaoshan, PRC, using standard verification procedures, including on-site inspection of its facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. The findings at verification are detailed in the verification report dated October 15, 1998, the public version of which is on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU-Public File).

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and, (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management. (*See Silicon Carbide,* 59 FR at 22587 and *Sparklers,* 56 FR at 20589.)

In each of the previous administrative reviews of the antidumping duty order on HSLWs from the PRC, covering successive review periods from October 1, 1993 through September 30, 1996, we determined that ZWG merited a separate rate. We have found that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to ZWG's export activities according to the criteria identified in *Sparklers,* and an absence of government control with respect to the additional criteria identified in *Silicon Carbide.* Therefore, we have continued to assign ZWG a separate rate.

Export Price

Because ZWG sold the subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States and Constructed Export Price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the f.o.b. price to unaffiliated purchasers. From this price, we deducted amounts for foreign inland freight and brokerage and handling. We valued these deductions using surrogate country cost data. We selected India as the surrogate country for the reasons explained in the ''Normal Value'' section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC HSLWs industry is a market-oriented industry (MOI) and, consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors of production (FOP) in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We determined that India is at a comparable level of economic development to that of the PRC. Also, India is a significant producer of comparable merchandise. Therefore, for this review, we have used Indian prices to value the FOP except where the factor was purchased from a market economy supplier and paid for in a market economy currency. (*See* Memorandum to Susan Kuhbach from Jeff May, dated March 5, 1998, ''Certain Helical Spring Lock Washers from the

PRC: Nonmarket Economy Status and Surrogate Country Selection,'' which is on file in the CRU-Public File.)

We selected, where possible, publicly available values from India which were: (1) Average non-export values; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and, (4) tax-exclusive. We valued the factors of production as follows:

- A meaningful amount of the input carbon steel wire rod was purchased from the United Kingdom, a market economy supplier, and paid for in a market economy currency. Pursuant to 19 CFR 351.408(c)(1), we valued this factor using the price paid to the market economy supplier. Thus, for carbon steel wire rod values, we used the average cost per metric ton of carbon steel wire rod imported from the United Kingdom by ZWG during the period of review. We made further deductions to account for the freight costs incurred between the port and ZWG.
- For the value of chemicals used in the production and plating process of HSLWs, we used per kilogram values obtained from the Indian publication *Chemical Weekly* and from the *Monthly Statistics of the Foreign Trade of India-Imports (MFTI).* We adjusted these values, where appropriate, to reflect inflation through the POR using the Wholesale Price Index (WPI) as reported in the *International Financial Statistics* published by the International Monetary Fund (IMF). We also adjusted these values to account for freight costs incurred between the supplier and ZWG.
- For labor, we used the regression-based wage rate for the PRC in ''Expected Wages of Selected NME Countries,'' located on the Internet at http://www.ita.doc.gov/import__admin/records/wages/. Because of the variability of wage rates in countries with similar per capita GDP's, 19 CFR 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source for the regression based-wage rates is ''Expected Wages of Selected NME Countries—1995 Income Data,'' *1996 Year Book of Labour Statistics,* International Labour Office, (Geneva: 1996) Chapter 5B: Wages in Manufacturing.
- For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from the January, 1997 *Reserve Bank of India Bulletin* for the Indian industry group ''Processing and Manufacturing: Metals, Chemicals, and Products Thereof.'' From this information, we were able to determine factory overhead as a percentage of the total cost of manufacturing, SG&A as a percentage of the total cost of manufacturing, and the profit rate as a percentage of the cost of manufacturing plus SG&A.
- For packing materials, we used the per kilogram values obtained from the *MFTI.* Where necessary, we adjusted these values to reflect inflation through the POR using the WPI published by the IMF. We also adjusted them to account for freight costs incurred between the PRC supplier and ZWG.
- To value coal, we used a per kilogram value obtained from the *MFTI.* We adjusted this value to reflect inflation through the POR using the WPI published by the IMF. We also adjusted this amount to account for freight costs incurred between the supplier and ZWG.
- To value electricity, we used the price of electricity for 1995 reported in the *1995 Confederation of Indian Industries Handbook of Statistics.* We adjusted the value to reflect inflation through the POR using the WPI published by the IMF.
- To value water, we used the November, 1993 *Water Utilities Data Book for the Asian and Pacific Region* published by the Asian Development Bank. We adjusted the value to reflect inflation through the POR using the WPI published by the IMF.
- To value foreign brokerage and handling, we used information reported in the *Less Than Fair Value Investigation of Stainless Steel Bar from India* in a document dated April 22, 1994.
- To value truck freight, we used a rate derived from the April 20, 1994 issue of *The Times of India.* We adjusted the rate to reflect inflation through the POR using the WPI published by the IMF.
- To value rail freight, we used rate information published by the Indian Railway Conference Association for rates in force from April 1, 1995. We adjusted the rate to reflect inflation through the POR using the WPI published by the IMF.
- To value shipping freight, we used a rate reported to the Department in the August, 1993 cable from the U.S. Embassy in India which was submitted for and used in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833 (September 20, 1993). We adjusted the rate to reflect inflation through the POR using the WPI published by the IMF.

For a complete description of the factor values used, *see* ''Memorandum to File: Factor Values Used for the Preliminary Results of the Fourth Administrative Review,'' dated November 2, 1998 (Factors Memorandum) a public version of which is available in the Public File.

Additionally, we adjusted the reported figure for indirect labor based on our findings at verification, *see* ''Memorandum to File: Calculation Notes for Preliminary Results,'' dated November 2, 1998, a public version of which is available in the Public File.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Zhejiang Wanxin Group Co., Ltd	10/01/96–09/30/97	4.29

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice, in accordance with 19 CFR 351.224. Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (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 the final results of this administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated an importer-

specific *ad valorem* duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total value of the subject merchandise entered during the POR. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. This rate will be assessed uniformly on all entries of that specific importer made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of HSLWs from the PRC 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) For ZWG, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, which is 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

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 351.402(f) 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 doubled antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: November 3, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29995 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–805]

Industrial Nitrocellulose From the Republic of Korea; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 10, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the Republic of Korea (Korea). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1996, through June 30, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4195 or 482–3814, 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 Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (62 FR 27296, May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1998, the Department published in the **Federal Register** (63 FR 37329) the preliminary results of the administrative review of the antidumping order on industrial nitrocellulose (INC) from Korea, 55 FR 28267 (July 10, 1990). On August 10, 1998, we received a case brief from Daesang Corporation (respondent) as well as comments from Hercules Incorporated (petitioner). Based on our analysis of the comments received, we changed the final results from those presented in the preliminary results.

Scope of Review

Imports covered by this review are shipments of INC from Korea. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage. This review covers one manufacturer/exporter of industrial nitrocellulose, Daesang Corporation, and period July 1, 1996, through June 30, 1997.

Analysis of Comments Received

Comment 1

Daesang states that the Department made a clerical error in its preliminary results computer programming by erroneously adding both the commission offset (OFFSETU) and U.S. indirect selling expenses (INDEXUS) in its calculation of foreign net price expressed in dollars (FUPDOL). Daesang states that OFFSETU correctly accounted for home market commissions on two of the three matching control numbers (CONNUMs) for the U.S. sales, which had no commissions. Adding the variable INDEXUS in the calculation of FUPDOL would lead to a double counting of the commission offset. While petitioner did not comment on this specific issue, petitioner supports the Department's Preliminary Determination.

Department's Position

We agree with Daesang Corporation that home market commissions or U.S. indirect selling expenses, whichever is less, have been accounted for in U.S. offsets (OFFSETU) applied to FUPDOL, and have revised our programming language accordingly for these final results.

Final Results of the Review

As a result of our review, we determine that the following margin exists:

Manufacturer/Exporter	Margin (percent)
Daesang Corporation	2.1

The Department shall determine, and the Customs Services shall assess, antidumping duties on all appropriate entires. Individual differences between export price and normal value may vary from the percentage stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rates will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of industrial nitrocellulose from Korea 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 listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 66.30 percent, the ''all others'' rate established in the LTFV investigation (55 FR 21055, May 22, 1990). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their reponsibility under 19 CFR 351.402(f) 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 doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.32 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 30, 1998.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 98–29851 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of antidumping duty administrative review of industrial nitrocellulose from the United Kingdom.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the antidumping duty administrative review of the antidumping order on industrial nitrocellulose from the United Kingdom. This review covers one producer/exporter of industrial nitrocellulose. The period of review is July 1, 1996 through June 30, 1997.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act'') 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. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR 351.101, et seq. (62 FR 27296—May 19, 1997).

Extension of Final Results

The Department initiated this administrative review on August 28, 1997 (62 FR 45621). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. Because of the complexity of an issue in this case, it is not practicable to complete this review within the statutory time limit of 365 days. The Department, therefore, is extending the time limit for the final results of the aforementioned review to February 3, 1999. *See* memorandum from Holly A. Kuga to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limit is in accordance with section 751(a)(3)(A) of the Act and § 351.213(h)(2) of the Department's regulations.

Dated: November 3, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 98–29994 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal from the People's Republic of China; Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the second review of the antidumping duty order on manganese metal from the People's Republic of China. The period of review is February 1, 1997 through January 31, 1998. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreement Act.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Greg Campbell, Office 1, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2239.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'') (*i.e.*, November 2, 1998), the Department of Commerce (''the Department'') is extending the time limit for completion of the preliminary results to not later than March 2, 1999. *See* November 2, 1998, Memorandum from Acting Deputy Assistant Secretary for AD/CVD Enforcement Susan H. Kuhbach to Assistant Secretary for Import Administration Robert LaRussa on file in the public file of the Central Records Unit, B–099 of the Department.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213(h)(2).

Dated: November 2, 1998.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 98–29993 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time Limits of final results of review.

SUMMARY: The Department of Commerce is extending the time limits of the final results of the sixth antidumping duty administrative review of the antidumping duty order on silicon metal from Brazil. The review covers five manufacturer/exporters of the subject merchandise to the United States for the period July 1, 1996, through June 30, 1997.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Cameron Werker, Office 4, Office of AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5193, or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the initial time limits established by the Uruguay Round Agreements Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the final results until February 2, 1999. *See Memorandum to Robert S. LaRussa,* dated October 28, 1998.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 1, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–29854 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 84–9A012.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review (''Certificate'') granted to Northwest Fruit Exporters (''NFE'') on June 11, 1984. Notice of issuance of the original Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998). The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Northwest Fruit Exporters' (''NFE'') original certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16303, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); and October 22, 1997 (62 FR 55783, October 28, 1997).

NFE's Certificate has been amended to:

1. Add the following companies as a new ''Member'' of the Certificate within the meaning of § 325.2 (1) of the regulations (15 CFR 325.2(1)): E. Brown & Sons Inc., Milton Freewater, Oregon; E.W. Brandt & Sons, Inc., Parker, Washington; Domex Marketing Co., Yakima, Washington; Dovex Export Co., Wenatchee, Washington; Henggeler Packing Co., Inc, Fruitland, Idaho; Rainier Fruit Sales, Selah, Washington; and

2. Delete the following companies as ''Members'' of the Certificate: Diamond Fruit Growers, Hood River, Oregon; Haas Fruit Co., Inc., Yakima, Washington; J.C. Watson Co., Parma, Idaho; Jenks Bros. Cold Storage Inc., Royal City, Washington; Jones Orchards, Yakima, Washington; Naumes, Inc., Medford, Oregon; Oro Fruit Co., Oroville, Washington; Perham Fruit Corp., Wapato, Washington; Squaw Creek Ranch, Inc., Pateros, Washington; The Apple House, Inc., Brewster, Washington; and

3. Change the listing of the company name for each current ''Member'' cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Cascadian Fruit Shippers, Inc. (Custom Fruit Packers); Cubberly Packing Co., Inc. (CPC International Apple Co.); Barbee Orchards/Obert Cold Storage (Obert Cold Storage).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 3, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–29916 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Jamaica and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for the period January 1, 1999 through December 31, 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	745,113 dozen pairs.
338/339/638/639.	1,469,168 dozen.
340/640	687,021 dozen of which not more than 581,326 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	862,688 dozen.
345/845	212,872 dozen.
347/348/647/648.	1,585,783 dozen.
352/652	2,369,458 dozen.
445/446	53,978 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1999 and extends through December 31, 1999:

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29977 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Mauritius and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The limits for Categories 338/339 and 347/348 have been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit Group 345, 438, 445, 446, 645 and 646, as a group.	199,072 dozen.
Levels not in a group	
237	256,715 dozen.
335/835	102,046 dozen.
336	120,083 dozen.
338/339	458,792 dozen.
340/640	782,369 dozen of which not more than 476,248 dozen shall be in Categories 340–Y/640–Y [1].
341/641	541,965 dozen.
347/348	965,737 dozen.
351/651	237,995 dozen.
352/652	2,018,188 dozen of which not more than 1,715,462 dozen shall be in Category 352.
442	12,177 dozen.
604–A [2]	427,959 kilograms.
638/639	552,852 dozen.
647/648/847	745,486 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29979 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATIONS OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated December 13, 1993 and January 15, 1994, as amended and extended, between the Governments of the United States and the Sultanate of Oman establishes limits for textile products, produced or manufactured in Oman and

exported during the period January 1, 1999 and through December 31, 1999.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1999 period. The limit for Categories 347/348 has been reduced for carryforward applied in 1998.

These limits may be revised if Oman becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Oman.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated December 13, 1993 and January 15, 1994, as amended and extended, between the Governments of the United States and the Sultanate of Oman, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	154,500 dozen.
335/635	267,645 dozen.
338/339	555,364 dozen.
340/640	267,645 dozen.
341/641	200,733 dozen.
347/348	902,671 dozen.
647/648/847	410,305 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Sultanate of Oman.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Oman becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Oman.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29978 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, between the Governments of the United States and Ukraine establishes limits for certain wool textile products for the period January 1, 1999 through December 31, 1999.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
435	91,902 dozen.
442	15,300 dozen.
444	66,300 numbers.
448	66,300 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such

products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29975 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1999 period. The 1999 levels for Categories 315 and 361 are zero. The limits for certain categories have been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	1,365,418 square meters.
226/313	2,334,898 square meters.
315	–0–.
317	37,666,652 square meters.
326	2,204,148 square meters.
334/634	263,024 dozen.
335/635/835	180,561 dozen.
336/636	227,953 dozen.
338/339	688,251 dozen of which not more than 433,697 dozen shall be in Categories 338–S/339–S [1].
340/640	403,305 dozen.
341/641	373,623 dozen.
342/642	296,822 dozen.
347/348	483,264 dozen of which not more than 241,632 dozen shall be in Categories 347–T/348–T [2].
351/651	201,652 dozen.
352	393,287 dozen.
361	–0–.
363	6,944,665 numbers.
369–S [3]	102,273 kilograms.
369–O [4]	725,451 kilograms.
638/639	278,268 dozen.
647/648	398,852 dozen.
847	250,442 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 25, 1997) to the extent of any unfilled balances. In the event the limits established for that period have

been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29976 Filed 11–6–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, December 2, 1998: 5:30 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m. Call to Order
5:40 p.m. Presentations
7:00 p.m. Public Comment/Questions
7:30 p.m. Break
7:45 p.m. Review Action Items
8:00 p.m. Approve Meeting Minutes
8:10 p.m. Committee Reports
8:45 p.m. Public Comment
9:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on November 2, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–29939 Filed 11–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, December 3, 1998: 9:00 a.m.—5:00 p.m. Friday, December 4, 1998: 8:30 a.m.—4:00 p.m.

ADDRESSES: DoubleTree Inn Downtown, 310 SW Lincoln, Portland, OR, ph: 509–221–0450; fax: 509–226–6260.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Board will receive information on and discuss issues related to Hanford Waste Management; the Tank Waste Remediation System (TWRS)—board review process (formation of TWRS committee), status of proposed tri-party negotiations, discussion of public process related to privatization, and input into 90-day plan on the Office of River Protection; board self-evaluation; recommendations on Openness Panel; spent fuel—revised baseline; and the plutonium finishing plant integrated baseline.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on November 3, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–29940 Filed 11–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of Meetings.

SUMMARY: The Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will conduct meetings November 16–17, at the IEA's headquarters in Paris, France, to permit ISAG representatives to participate in the training phase of an Emergency Response Exercise.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meetings is provided:

Meetings of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held on November 16–17, 1998, at the headquarters of the IEA , 9 rue de la Federation, Paris, France, beginning at approximately 9:00 a.m. on November 16. The purpose of these meetings is to permit ISAG representatives to participate in the training phase of an Emergency Response Exercise. The agenda for the meetings is as follows:

November 16, 1998

1. Review of the Agenda and Focus of the Training Program
   - Welcome to the IEA
   - Objectives of ISAG Training 1998 and Review of the Agenda
2. IEA Organization and Purpose
   - Basic Objectives of the IEA
   - Emergency Management Organization—the Agreement on an International Program, Industry Advisory Board (IAB), Standing Group on Emergency Questions (SEQ), ISAG, and Emergency Operations Team
3. Legal Issues
4. ISAG's Role, Organization and Responsibilities
   - Background on ISAG
   - General ISAG Responsibilities
5.
   - Introduction to the Emergency Management Manual (EMM) and Reference Guide
   - Introduction to Coordinated Emergency Response Measures (CERM)
6. ISAG Activities
   - Pre-operational Phase
   - Operational Phase—Base Period Final Consumption, Available Supplies, Emergency Response Drawdown Obligation, and Allocation Rights/Allocation Obligations Matrix
7. An Introduction to IEA Information and Communications Systems
   - Communication Services at the IEA and Data Security
   - Data Available at the IEA to ISAG
   - Structure and Contents of Questionnaires A and B, and Reporting Relationships
8. The Balancing Process and Voluntary Offers
   - Definitions of Voluntary Offers and their Role in the EMM Balancing Process
   - Functions of the Emergency Operations Team, National Emergency Sharing Organizations, and Reporting Companies in Generating and Processing Voluntary Offers
   - Creation of a Voluntary Offer
9. Description of Disruption Scenario and Discussion of Major Imbalances

November 17, 1998

Disruption Scenario

1. Work of Day 2
   - Review of the Objectives of Day 2
2. Definition of Main Problem Areas Resulting from Disruption Scenario and ISAG's Monitoring Role
   - Impact of Disruption on:
   - Crude oil and product streams
   - Key countries
   - Refining operations
   - Transport

Emergency Response Strategy

1. Group Discussion of Crisis Scenarios with Participants Using their Expertise to Refine Definitions of Problems and Identify Solutions (N. America, Far East, NW Europe, Mediterranean)
2. Individual Groups Present their Conclusions for General Discussion
3. Final Consideration of Technical Consequences arising from a Disruption and Possible Response Strategies
4. Prepare Summary for ISAG Manager to Present at the Emergency Response Exercise 1998
5. Practical Work on Voluntary Offers Prepared by Secretariat from Disrupted Data Base
6. Critique of Training Program and Summary
7. Further Practical Work on Voluntary Offers as Required

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the ISAG and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the ISAG or the IEA.

Issued in Washington, D.C., November 3, 1998.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 98–29843 Filed 11–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 98–85–NG]

Office of Fossil Energy; Renaissance Energy (U.S.) Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Renaissance Energy (U.S.) Inc. (Renaissance U.S.) authorization to import up to 23,404 Mcf of natural gas per day from Canada for a ten-year term beginning on November 1, 1998, through October 31, 2008, under the terms and conditions of its gas supply contract with Renaissance Energy Ltd. The natural gas will be imported at the international border between Canada and the United States at Niagara Falls, New York.

This Order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–042, FE–34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., November 2, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–29943 Filed 11–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Mid-Columbia Coho Restoration Feasibility Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: This notice announces BPA's proposal to implement various studies and research projects in the Methow, Wenatchee, and Entiat River watersheds, located in the State of Washington in Chelan and Okanogan Counties. These projects will focus on the feasibility of restoring coho salmon to the mid-Columbia tributaries, including the release of coho fingerlings and smolts into these tributaries and the possible initiation of a local broodstock development program. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than November 24, 1998.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—ACS–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION, CONTACT: Nancy Weintraub—ECN–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5373, fax number 503–230–4089.

SUPPLEMENTARY INFORMATION: The project would involve work in the Wenatchee, Entiat, and Methow watersheds. The work would include mostly activities with minimal impacts, such as snorkeling, seining, electroshocking, screw trapping, spawning surveys, and placement of fish into these rivers and their tributaries. It may also involve the construction of low-impact, low-technology acclimation ponds or the netting-off of side channels to provide sites for coho acclimation. Placement of temporary weirs into streams may also occur. Exact locations for these activities have not yet been identified, but existing facilities will be used as much as possible. The only alternative identified to date is the no-action alternative.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on November 2, 1998.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 98–29942 Filed 11–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–20–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, December 1, 1998.

Algonquin states that, pursuant to Section 32 of the General Terms and Conditions of its FERC Gas Tariff, it is filing to revise the Fuel Reimbursement Percentages (FRPs) for the four calendar periods beginning December 1, 1998. Algonquin states that company use for the actual period decreased by 34% compared to Algonquin's projected requirement from the last FRQ annual filing due primarily to decreased fuel use as a result of lower throughput and decreased unaccounted for gas. Algonquin states that the use of actual data for the latest available 12-month period yields decreased FRPs which, compared to the last FRQ annual filing, consist of a 0.03% decrease in the FRP for the Winter season and seasonal decreases for the Spring, Summer and Fall seasons ranging from 0.36% to 0.54%. Algonquin proposes to levelize the three non-winter periods in response to requests from customers for rate stability.

Algonquin requests any waivers necessary to permit the percentage calculated from the actuals for the entire 8-month period, combining Spring, Summer and Fall, to be applied during each of the three seasonal periods so that for the entire 8-month period the FRP will not change from one season to the next.

Algonquin also states that it is submitting the calculation of the fuel reimbursement quantity (FRQ) deferral allocation, pursuant to Section 32.5(c) which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period.

Algonquin states that for the period August 1, 1997 through July 31, 1998, the FRQ Deferred Account resulted in a net debit balance that will be surcharged to Algonquin's customers, based on the allocation of the account balance over the actual throughput during the accumulation period, exclusive of backhauls. Algonquin also states that the amounts reflected in the filing are computed on the basis of actual cash transactions, consistent with the Commission's holdings in Koch Gateway Pipeline Co., 76 F.E.R.C. ¶ 61,296 (1996), and ANR Pipeline Co., 80 F.E.R.C. ¶ 61,173 (1997), in which the Commission established its currently effective policy of requiring pipelines to use cash transactions, rather than imputed values, for purposes of calculating deferred accounts related to imbalance resolution procedures.

Algonquin states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29931 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–118–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that, on October 30, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective December 1, 1998:

Second Revised Sheet No. 163
Third Revised Sheet No. 165

ANR states that the purpose of this filing is to comply with Section 1.7 of the Gas Research Institute (GRI) Settlement dated January 21, 1998, in Docket No. RP97–149–003, et al., to provide for a voluntary GRI contribution mechanism in ANR's tariff.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29928 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–114–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1998:

Thirtieth Revised Sheet No. 25
Thirtieth Revised Sheet No. 26
Thirtieth Revised Sheet No. 27
Twelfth Revised Sheet No. 30A

On December 22, 1997 Columbia submitted tariff sheets pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408 et al., approved by the Commission on April 17, 1997 (79 FERC ¶61,044 (1997)). Pursuant to the true-up provision, Columbia is required to true-up its collections from the Settlement Component for 12-month periods commencing November 1, 1996. The initial 12-month period ended October 31, 1997. In compliance with the Settlement, Columbia filed to return an over-recovered amount of $680,404, including interest, from that initial 12-month period through an adjustment to the Settlement Component of the base rates for the period January 1, 1998 through October 31, 1998. In accordance with the Settlement, the true-up component of the Settlement Component is to be removed effective November 1, of each year. The instant filing is being made to remove such true-up component from the currently effective Settlement Component effective November 1, 1998.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29924 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–116–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Fourth Revised Sheet No. 443

Columbia states that this filing is being submitted pursuant to the April 29, 1998, order issued by the Federal Energy Regulatory Commission (Commission) in the Gas Research Institute (GRI) proceedings in Docket Nos. RP97–149–003, et al. 83 FERC ¶61,093 (1998) (Order) approving the Stipulation and Agreement dated January 21, 1998 (Settlement). In the Settlement, Columbia agreed to be a voluntary collection agent for shippers who voluntarily choose to contribute to GRI programs through a ''check-the-box'' mechanism on billing invoices in addition to the settlement charges, beginning January 1, 1999. The settlement provides that, among other things, effective January 1, 2005, GRI surcharges will no longer be in effect and will reflect declining surcharge rates for the period 1998 through 2003, with adjustments in 2004, if needed. Section 1.7 of the Settlement provides for voluntary funding for the years 1998 through 2004 and that, effective no later than January 1, 2005, all GRI funding and membership will be on a voluntary basis.

Columbia agrees to collect these voluntary amounts submitted by its shippers, and states that these amounts will not be part of Columbia's jurisdictional rates. As part of the ''check-the box'' procedure, the shipper

may state the amount of the contribution, as well as the project(s) the shipper wishes to support. Columbia proposes, consistent with the Order, that the Commission will not review or approve the amounts collected by Columbia. Columbia is adjusting Section 33 of the General Terms and Conditions of its tariff to implement the ''check-the box'' mechanism.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29926 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–115–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Fourth Revised Sheet No. 262

Columbia Gulf states that this filing is being submitted pursuant to the April 29, 1998, order issued by the Federal Energy Regulatory Commission (Commission) in the Gas Research Institute (GRI) proceedings in Docket Nos. RP97–149–003, et al. (83 FERC ¶61,093) (Order) approving the Stipulation and Agreement dated January 21, 1998 (Settlement). In the Settlement, Columbia Gulf agreed to be a voluntary collection agent for shippers who voluntarily choose to contribute to GRI programs through a ''check-the-box'' mechanism on billing invoices in addition to the settlement charges, beginning January 1, 1999. The settlement provides that, among other things, effective January 1, 2005, GRI surcharges will no longer be in effect and will reflect declining surcharge rates for the period 1998 through 2003, with adjustments in 2004, if needed. Section 1.7 of the Settlement provides for voluntary funding for the years 1998 through 2004 and that, effective no later than January 1, 2005, all GRI funding and membership will be on a voluntary basis.

Columbia Gulf agrees to collect these voluntary amounts submitted by its shippers, and states that these amounts will not be part of Columbia Gulf's jurisdictional rates. As part of the ''check-the-box'' procedure, the shipper may state the amount of the contribution, as well as the project(s) the shipper wishes to support. Columbia Gulf proposes, consistent with the Order, that the Commission will not review or approve the amounts collected by Columbia Gulf. Columbia Gulf is adjusting Section 33 of the General Terms and Conditions of its tariff to implement the ''check-the-box'' mechanism.

Columbia Gulf states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29925 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–7–000]

Cranberry Pipeline Corporation; Notice of Informal Settlement Conference

November 3, 1998.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Tuesday, November 10, 1998, at 10:00 a.m. in Room No. 91–62 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

Participation will be limited to the parties and staff. For additional information, please contact Penny Murrell at (202) 208–0531.

David P. Boergers,

Secretary.

[FR Doc. 98–29879 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–100–000]

Crossroads Pipeline Company; Notice of Compliance Filing

November 3, 1998.

Take notice that on October 29, 1998, Crossroads Pipeline Company (Crossroads) tendered for a filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective November 2, 1998:

First Revised Sheet No. 14
First Revised Sheet No. 24
Fourth Revised Sheet No. 39
Original Sheet No. 39A
Original Sheet No. 39B
First Revised Sheet No. 40
First Revised Sheet No. 41
Fifth Revised Sheet No. 76

Crossroads states that the purpose of this filing is to comply with Order No. 587–H, Final Rule Adopting Standards for Intra-day Nominations and Order Establishing Implementation Date issued on July 15, 1998 in Docket No. RM96–1–008. That order, inter alia, required that pipelines modify their tariffs to incorporate certain Gas Industry Standard Board standards regarding intro-day nominations.

Crossroads states that copies of the filing have been mailed to all affected customers and applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29868 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–1–000]

Destin Pipeline Company, L.L.C.; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 29, 1998, Destin Pipeline Company, L.L.C. (Destin) tendered for filing certain modifications to its FERC Gas Tariff, Original Volume No. 1 to become effective on December 1, 1998.

Destin states that the purpose of this filing is to update Section 20 of the General Terms and Conditions of its Tariff relating to marketing affiliates, as more particularly described in Destin's October 29, 1998 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29882 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–109–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, East Tennessee Natural Gas Company (East Tennessee), 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 November 30, 1998.

East Tennessee states that this filing proposes new tariff provisions that would enable East Tennessee and a shipper under certain limited circumstances to enter into different types of discount agreements without such agreements receiving prior approval from the Federal Energy Regulatory Commission as material deviation agreements. East Tennessee further states that the proposed tariff provisions would allow East Tennessee and a shipper to enter into agreements for specific discounts on specified volumes, during specified periods of time, and at designated points, zones or geographical areas. East Tennessee requests an effective date of November 30, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29875 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–110–000]

East Tennessee Natural Gas Company; Notice of Transportation Cost Rate Adjustment Filing

November 3, 1998.

Take notice that on October 30, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourteenth Revised Sheet No. 4, with an effective date of December 1, 1998.

East Tennessee states that because it has not incurred any demand or commodity Account 858 costs since its last Transportation Cost Rate Adjustment Filing, for the period December 1, 1998 through November 30, 1999, Fourteenth Revised Sheet No. 4 reflects a demand and commodity surcharges of $0.0 to the FT–A and FT–GS rates. East Tennessee further states that for the minimal over-recovery it has received, it will credit the actual net balance over collected as of November 30, 1998 to shipper invoices under the Affected Rate Schedules for activity in the month of December, 1998. Such crediting will include interest through the date of the invoice and will be in lieu of implementing the de minimus surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29876 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–119–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 167, to become effective December 1, 1998.

East Tennessee states that this filing proposes to implement a new tariff provision which would allow shippers to ''check the appropriate box'' on their monthly invoices and submit with their monthly payments voluntary contributions to the Gas Research Institute (''GRI''). East Tennessee further states that the proposed tariff provision is consistent with the Stipulation and Agreement approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on rehearing, 83 FERC ¶ 61,331 (1998), in which signatory pipelines agreed to be voluntary collection agents for GRI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29929 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–101–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 29, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1999:

First Revised Sheet No. 193

FGT states that in the instant filing, FGT is making revisions to its Gas Research Institute Charge Adjustment Provisions to comply with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement) as approved by the Commission's order issued April 29, 1998 in Docket No. RP97–199–003. Under the terms of the Settlement, Gas Research Institute (GRI) interstate pipeline company members agreed to be voluntary collection agents for shippers who voluntarily choose to contribute to GRI programs. Such voluntary contributions shall be made via a ''check-the-box'' mechanism allowing shippers to specify amounts they are contributing and the specific project(s) or project area(s) to which the amount are applicable.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29869 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–8–011 and RP98–205–002]

Granite State Gas Transmission Company; Notice of Reconversion Reserve Status Report

November 3, 1998.

Take notice that on September 30, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing a report and reconciliation relating to Granite State's reconversion reserve related to the lease extensions with Portland Pipe Line Corporation. The report reflects an undercollection of $101,419 which Granite State proposes to bill to its firm customers.

Granite State states that copies of its filing have been mailed to all of its firm transportation customers and to the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

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 November 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29886 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM99–1–51–000 and RP99–128–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

Ninth Revised Sheet No. 7

Second Revised Sheet No. 47
Fourth Revised Sheet No. 48

Great Lakes asserts that the purpose of this filing is to comply with the Commission's Order issued April 29, 1998, in Docket Nos. RP97–149–003, RP97–149–004, RP97–391–001, and RP97–391–002 and Docket No. RM97–3–001 (not consolidated), 83 FERC ¶ 61,093 (1998). That Order requires the above-described tariff sheets to be filed to reflect the Gas Research Institute's (GRI) future funding methodology. The following changes are reflected on the proposed tariff sheets:

The decrease to the GRI funding surcharges for 1999, as approved by the Commission, is shown on Ninth Revised Sheet No. 7;

A ''check the box'' procedure for voluntary GRI contributions is reflected on Second Revised Sheet No. 47.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29932 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–112–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 75E. The proposed effective date of this tariff sheet is January 1, 1999.

Iroquois states that it is submitting the filing in accordance with the Commission's April 29, 1998 order in Gas Research Institute, Docket Nos. RP97–149–003, et al., (83 FERC ¶ 61,093) authorizing pipelines to become collection agents for shippers wishing to voluntarily contribute to GRI. Pursuant to that order, Iroquois states that it is implementing a check-the-box mechanism to permit shippers to make such contributions and to specify specific projects or project areas to which the amounts collected should be applied. According to Iroquois, any funds collected are in addition to amounts collected under Section 12.1 of its tariff and will not be part of Iroquois jurisdictional rates or reviewed by the Commission.

Iroquois further requests a waiver of section 154.207 of the Commission's regulations to permit the tariff sheet to become effective as proposed.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211of 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29878 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–103–000]

KN Interstate Gas Transmission Company; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, KN Interstate Gas Transmission Company (KNI) tendered for filing to become a part of KNI's FERC Gas Tariff, the following revised tariff sheet(s) to be effective on January 1, 1999:

Third Revised Volume No. 1–B

First Revised Sheet No. 38
First Revised Sheet No. 39
Original Sheet No. 39A

Third Revised Volume No. 1–D

First Revised Sheet No. 30
Second Revised Sheet No. 31
Original Sheet No. 31A
Second Revised Sheet No. 32

KNI is making this filing pursuant to the January 21, 1998 Stipulation and Agreement (Settlement) approved by the FERC's order issued April 29, 1998 in Docket Nos. RP97–149–003, et al. In the Settlement, KNI and other pipelines have agreed to be voluntary collection agents for shippers who voluntarily choose to contribute to GRI programs through ''check-the-box'' approach on pipelines' invoices. Therefore, KNI proposed revised tariff language in Section 21.1 (Third Revised Volume No. 1–B) and Section 21.1 (Third Revised Volume No. 1–D) of the General Terms and Conditions of its Tariff to implement the ''check-the-box'' mechanism.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29871 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–104–000]

KN Wattenberg Transmission Liability Co.; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, KN Wattenberg Transmission Limited Liability Co. (KNW) tendered for filing to become a part of KNW's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective January 1, 1999:

First Revised Sheet No. 65
First Revised Sheet No. 66
Original Sheet No. 66A

KNW is making this filing pursuant to the January 21, 1998 Stipulation and Agreement (Settlement) approved by the FERC's order issued April 29, 1998 in Docket Nos. RP97–149–003, *et al.* In the Settlement, KNW and other pipelines have agreed to be voluntary collection agents for shippers who voluntarily choose to contribute to GRI programs through ''check-the-box'' approach on pipelines' invoices. Therefore, KNW proposed revised tariff language in Section 21 of the General Terms and Conditions of its Tariff to implement the ''check-the-box'' mechanism.

KNW states that copies of the filing were served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29872 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–111–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective December 1, 1998:

Twenty-fourth Revised Sheet No. 20
Twenty-first Revised Sheet No. 21
Twenty-second Revised Sheet No. 22
Twenty-fifth Revised Sheet No. 24
Second Revised Sheet No. 719
Original Sheet No. 719A
Fourth Revised Sheet No. 1414
Fifth Revised Sheet No. 1806
Seventh Revised Sheet No. 1807

Koch states that the purpose of this filing is to establish a just and reasonable incremental transportation rate associated with Koch's extension of the Bastian Bay Line to the Vesco Processing Plant. The Commission specifically denied Koch's proposal to roll in the cost of Bastian Bay in its last rate case (RP97–373) and required Koch to develop an incremental rate to recover these costs. Koch has developed an incremental transportation rate that will provide it with the opportunity to recover the cost for these facilities. This incremental rate shall apply to all firm, NNS, and interruptible transportation nominated from SLN #464 (tailgate at the Vesco Processing Plant). Koch proposes that, for those firm customers that were utilizing this receipt point prior to the extension, the incremental rate shall be discounted to zero for the remaining term of their agreement while those customers that are now using this point and the new facilities will be paying a just and reasonable incremental rate for the use of these facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29877 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–108–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, Midwestern Gas Transmission Company (Midwestern), 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, with an effective date of November 30, 1998.

Midwestern states that this filing proposes new tariff provisions that would enable Midwestern and a shipper under certain limited circumstances to enter into different types of discount agreements without such agreements receiving prior approval from the Federal Energy Regulatory Commission as material deviation agreements. Midwestern further states that the proposed tariff provisions would allow Midwestern and a shipper to enter into agreements for specific discounts on specified volumes, during specified periods of time, and at designated points, zones or geographical areas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29874 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–120–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 83, with an effective date of December 1, 1998.

Midwestern states that this filing proposes to implement a new tariff provision which would allow shippers to ''check the appropriate box'' on their monthly invoices and submit with their monthly payments voluntary contributions to the Gas Research Institute (''GRI''). Midwestern further states that the proposed tariff provision is consistent with the Stipulation and Agreement approved by the Commission in Gas Research Institute, 83 FERC 61,093 (1998), order on rehearing, 83 FERC 61,331 (1998), in which signatory pipelines agreed to be voluntary collection agents for GRI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29930 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–102–000]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Eleventh Revised Sheet No. 22, to be effective December 1, 1998.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the eleventh semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Commission promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit Eleventh Revised Sheet No. 22 to become effective December 1, 1998.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29870 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–97–469–005]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, proposed tariff sheets to be effective December 1, 1998.

Natural states that the purpose of this filing is to implement changes in rates under Natural's gas supply realignment (GSR) cost recovery mechanism in compliance with the Commission's order issued October 20, 1998 in Docket Nos. RP97–469–000 and RP97–469–004.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective December 1, 1998.

Natural states that copies of the filing have been mailed to Natural's customers and interested state regulatory commissions.

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 as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc 98–29887 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–294–002]

Northern Border Pipeline Company, Notice of Request to Extend Waiver

November 3, 1998.

Take notice that on October 27, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing a request for an extension of the waiver granted by Commission order issued July 30, 1998 in Docket No. RP98–294–000 of Section 284.10(c)(3)(iii) of the Commission's regulations requiring the provision of a table cross-referencing numeric designations of business parties with business party names.

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 November 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29888 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–99–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 28, 1998, pursuant to the Carlton Resolution in Docket No. RP96–347, Northern Natural Gas Company (Northern) has tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 Tariff Sheet Nos. 263H and 263H.1 to reflect the Sourcers' flow obligation after the Appendix B customers' year 3 election to source or buyout.

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 a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29891 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–117–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, proposed to be effective January 1, 1999:

First Revised Sheet No. 272
First Revised Sheet No. 273

Northern states that the above-referenced tariff sheets are being filed to revise Northern's Gas Research Institute (GRI) tariff provisions to comply with the Stipulation and Agreement Concerning GRI Funding, dated January 21, 1998 in Docket Nos. RP97–391–000, et al. (GRI Settlement).

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29927 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–33–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 3, 1998.

Take notice that on October 23, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP99–33–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate upgraded facilities at North Selah Meter Station in Yakima County, Washington authorized in blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to upgrade the North Selah Meter Station at the request of Cascade Natural Gas Company (Cascade) for additional delivery capabilities. Northwest states that by installing a 4-inch turbine meter and appurtenances and converting the existing meter to operate as a bypass that the maximum design capacity of the meter station would increase from 2,333 Dth per day at a 200 psig to approximately 5,206 Dth per day at 290 psig. Northwest further states that the total cost of the proposed upgrade of the North Selah Meter Station is estimated to be $41,901, which would be reimbursed by Cascade.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the

NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–29880 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–107–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice that on October 30, 1998, 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 December 1, 1998.

Panhandle states that this filing removes the Stranded Transportation Cost Volumetric Surcharge applicable to Rate Schedules IT and EIT for the reconciliation recovery period established in Docket No. RP97–536–000. In accordance with Section 18.13(c)(5) of the GT&C the reconciliation recovery period will terminate on November 30, 1998. Accordingly, Panhandle proposes to remove the 3.00¢ per Dt. Section 18.13 Stranded Transportation Cost Volumetric Surcharge.

Panhandle further states that this filing removes from its currently effective rates the Miscellaneous Stranded Cost Reservation Surcharge applicable to Rate Schedules FT, EFT and LFT and the Miscellaneous Stranded Cost Volumetric Surcharge applicable to Rate Schedule SCT established in a February 12, 1997 Stipulation and Agreement (February 12, 1997 Settlement) in Docket No. RP96–260–000. Accordingly, pursuant to Article I, Section 3(d)(ii) of the February 12, 1997 Settlement Panhandle proposes to remove the $0.02 per Dt. Initial Docket No. RP96–260–000 Settlement Reservation Surcharge applicable to Rate Schedules FT, EFT and LFT and the 0.13¢ per Dt. Initial Docket No. RP96–260–000 Settlement Volumetric Surcharge applicable to Rate Schedule SCT.

Panhandle also states that this filing removes from its currently effective rates the Carryover GSR Settlement Interruptible Rate Component applicable to interruptible transportation service provided under Rate Schedules IT and EIT. The Carryover GSR Settlement Interruptible Rate Component, which was established in Docket No. RP98–27–000, was approved by Commission letter order issued November 28, 1997. In accordance with the Commission's letter order issued November 28, 1997 the GSR Settlement Carryover Period will terminate on November 30, 1998.

Accordingly, Panhandle proposes to remove the 8.44¢ per Dt. Carryover GSR Settlement Interruptible Rate Component applicable to Rate Schedules IT and EIT.

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 said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29873 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–4–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 29, 1998, Tennessee Gas Pipeline Company (Tennessee), filed the following: (1) a Blanket Authorization Agreement among Tennessee, Boston Gas Company (''Boston Gas'') and Enron Capital & Trade Resources Corporation (''Enron''); (2) a Blanket Authorization Agreement among Tennessee, Boston Gas and El Paso Energy Marketing Company (''El Paso Marketing''); (3) a Blanket Authorization Agreement among Tennessee, Essex County Gas Company (''Essex'') and Enron; (4) a Blanket Authorization Agreement among Tennessee, Essex and El Paso Marketing; (5) First Revised Sheet No. 413 of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 (''Volume No. 1 Tariff''); and (6) Alternate First Revised Sheet No. 413 of Tennessee's Volume No. 1 Tariff.

Tennessee states that the four Blanket Authorization Agreements are being submitted for Commission approval because the Blanket Authorization Agreements contain language which differs from Pro Forma Blanket Authorization Agreement contained in Tennessee's Volume No. 1 Tariff. Tennessee further states that, pursuant to Section 154.112(b) of the Commission's regulations, it is submitting First Revised Sheet No. 413 with an effective date of December 1, 1998. However, Boston Gas and Essex strongly desire that they be able to effectuate the terms of the four Blanket Authorization Agreements by November 1, 1998. Therefore, at their behest, Tennessee is also submitting with this filing Alternate First Revised Sheet No. 413 with an effective date of November 1, 1998 in the event that the Commission approves these customers' deemed request for a waiver of the 30-day notice requirement of the Commission's regulations.

Tennessee submits that the four Blanket Authorization Agreements contain provisions which differ from the Pro Forma Blanket Authorization Agreement in several respects. First, the Blanket Authorization Agreements allow Boston Gas and Essex (the ''Contract Holders''), to delegate agency authority to both Enron and El Paso Marketing (the ''Blanket Agents''), rather than to a single agent. Second, the Blanket Authorization Agreements allow the Contract Holders to delegate only some of the Contract Holders' service agreements on the Tennessee's system and for specified contract quantities for each agreement. Third, the term provisions of the Blanket Authorization Agreements have been modified to reflect an automatic termination of the Blanket Authorization Agreements on March 31, 1999. Finally, the term provision of the Blanket Authorization Agreements has also been modified to allow any Party to terminate the Blanket Authorization

Agreements upon twenty-four hours written notice to the other parties, such termination to be effective upon receipt of the termination notice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29881 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–113–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 3, 1998.

Take notice that on October 30, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 385, to become effective December 1, 1998.

Tennessee states that this filing proposes to implement a new tariff provision which would allow shippers to ''check the appropriate box'' on their monthly invoices and submit with their monthly payments voluntary contributions to the Gas Research Institute (GRI). Tennessee further states that the proposed tariff provision is consistent with the Stipulation and Agreement approved by the Commission in Gas Research Institute, 83 FERC (¶ 61,093 (1998)), order on rehearing, 83 FERC (¶ 61,331 (1998)), in which signatory pipelines agreed to be voluntary collection agents for GRI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29923 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–381–000]

Transcontinental Gas Pipe Line Corporation; Notice of Technical Conference

November 3, 1998.

In the Commission's order issued on September 30, 1998, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, December 17, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 98–29889 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–411–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1998.

Take notice on October 29, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in the filing. The proposed effective date for the tariff sheets is November 2, 1998.

Transco states that the purpose of the instant filing is to comply with the Commission's letter order issued on October 14, 1998, as modified by the Commission's October 19, 1998 ''Notice of Extension of Time,'' (October 14 Order). The October 14 Order directed Transco to file revised tariff sheets to rectify exceptions found in Transco's September 18, 1998 filing made to comply with the Commission's Order No. 587–H issued July 15, 1998. Specifically, the revised tariff sheets include bumping notice procedures consistent with those in Transco's OFO procedures, and remove the phrase ''in advance of each day'' from all its Part 284 and Part 157 rate schedules in order to make these rate schedules consistent with the intra-day procedures adopted by Order No. 587–H.

In addition, Transco states that the instant filing contains revised tariff language to clarify that Transco does not propose to limit shippers to one intraday nomination per nomination cycle per contract. Transco further states that no waivers of non-critical daily penalties are required as Transco's tariff contains no non-critical daily penalties that would apply to an interruptible transportation shipper whose scheduled volumes are bumped by a firm intra-day nomination.

Transco requests a waiver of Section 154.203(b) of the Commission's regulations in order that the conforming revisions to Transco's services performed under Part 157 of the Commission's regulations, as described in the filing, may be included in the instant filing.

Transco is serving copies of the instant filing to customers, State Commissions 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 as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29890 Filed 11–6–98; 8:45]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–300–000, et al.]

Northern Indiana Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

October 29, 1998.

Take notice that the following filings have been made with the Commission:

1. Northern Indiana Public Service Company

[Docket No. ER99–300–000]

Take notice that on October 26, 1998, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Tractebel Energy Marketing, Inc., (TEMI).

Northern Indiana has requested an effective date of September 30, 1998.

Copies of this filing have been sent to TEMI, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Morgan Stanley Capital Group Inc., EnerZ Corporation, Tenaska Frontier Partners, Ltd., Cogentrix Energy Power Marketing, Northeast Energy Services, Inc., Lowell Cogeneration Company Limited Partnership, QST Energy Trading Inc., Enerserve, L.C., North Atlantic Utilities, Inc., Woodruff Energy, Woodruff Energy, Pepco Services, Inc. and SCANA Energy Marketing, Inc.

[Docket Nos. ER94–1384–021, ER96–3064–010, ER98–1767–004, ER95–1739–012, ER97–4347–004, ER99–297–000, ER96–553–012, ER96–182–012, ER97–1716–004, ER97–3526–002, ER97–3526–003, ER99–291–000 and ER96–1086–010]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 23, 1998, Morgan Stanley Capital Group Inc. filed certain information as required by the Commission's November 8, 1994 order in Docket No. ER94–1384–000.

On October 23, 1998, EnerZ Corporation filed certain information as required by the Commission's October 21, 1996 order in Docket No. ER96–3064–010.

On October 23, 1998, Tenaska Frontier Partners, Ltd. filed certain information as required by the Commission's March 30, 1998 order in Docket No. ER98–1767–000.

On October 23, 1998, Cogentrix Energy Power Marketing, Inc. filed certain information as required by the Commission's October 13, 1995 order in Docket No. ER95–1739–000.

On October 23, 1998, Northeast Energy Services, Inc. filed certain information as required by the Commission's October 24, 1997 order in Docket No. ER97–4347–000.

On October 23, 1998, Lowell Cogeneration Company Limited Partnership filed certain information as required by the Commission's July 17, 1997 order in Docket No. ER97–2414–000.

On October 23, 1998, QST Energy Trading Inc. filed certain information as required by the Commission's March 14, 1996 order in Docket No. ER96–553–000.

On October 23, 1998, Enerserve, L.C. filed certain information as required by the Commission's December 28, 1995 order in Docket No. ER96–182–000.

On October 23, 1998, North Atlantic Utilities, Inc. filed certain information as required by the Commission's April 3, 1997 order in Docket No. ER97–1716–000.

On October 23, 1998, Woodruff Energy filed certain information as required by the Commission's August 11, 1997 order in Docket No. ER97–3526–000.

On October 23, 1998, Woodruff Energy filed certain information as required by the Commission's August 11, 1997 order in Docket No. ER97–3526–000.

On October 23, 1998, Pepco Services, Inc. filed certain information as required by the Commission's July 16, 1998 order in Docket No. ER98–3096–000.

On October 23, 1998, SCANA Energy Marketing, Inc. filed certain information as required by the Commission's May 13, 1996 order in Docket No. ER96–1086–000.

3. NIPSCO Energy Services Inc., Northrop Grumman Corporation, Energy Resources Marketing, Inc., Pacific Northwest Generating Cooperative, Sunoco Power Marketing, L.L.C., Mid-American Power, LLC, Global Energy & Technology, Inc., Central Hudson Enterprises, Northeast Empire Limited Partnership #2, Applied Resources Integrated Services, Incorporated, Washington Gas Energy Services, DC Tie, Inc., GEN–SYS Energy, Power Fuels, Inc., NGTS Energy Services, California Power Services, Northern Indiana Public Service Company, Englehard Power Marketing, Inc., PEC Energy Marketing, Inc., DePere Energy LLC, DePere Energy Marketing, Inc., Bollinger Energy Corporation, Wasatch Energy Corporation, Heartland Energy Services, Inc. and NESI Power Marketing, Inc.

[Docket Nos. ER96–1431–010, ER96–2957–008, ER94–1580–016, ER97–504–008, ER97–870–007, ER96–1858–010, ER97–3416–004, ER97–2869–005, ER98–1125–001, ER98–1125–002, ER98–1125–003, ER97–2604–005, ER96–2830–004, ER91–435–027, ER97–4335–004, ER96–1930–009, ER96–2892–007, ER97–3525–002, ER99–306–000, ER94–1690–018, ER97–1431–007, ER97–4586–002, ER97–1432–007, ER98–1821–001, ER97–1248–004, ER94–108–016 and ER97–841–007]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 26, 1998, NIPSCO Energy Services Inc. filed certain information as required by the Commission's May 29, 1996 order in Docket No. ER96–1431–000.

On October 26, 1998, Northrop Grumman Corporation filed certain information as required by the Commission's November 13, 1996 order in Docket No. ER96–2957–000.

On October 26, 1998, Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994 letter order in Docket No. ER94–1580–000.

On October 26, 1998, Pacific Northwest Generating Cooperative filed certain information as required by the Commission's January 13, 1997 order in Docket No. ER97–504–000.

On October 26, 1998, Sunoco Power Marketing, L.L.C. filed certain information as required by the Commission's April 11, 1997 order in Docket No. ER97–870–000.

On October 26, 1998, Mid-American Power LLC filed certain information as required by the Commission's July 16,

1996 order in Docket No. ER96–1858–000.

On October 26, 1998, Global Energy & Technology, Inc. filed certain information as required by the Commission's August 1, 1997 order in Docket No. ER97–3416–000.

On October 26, 1998, Central Hudson Enterprises Corporation filed certain information as required by the Commission's June 26, 1997 order in Docket No. ER97–2869–000.

On October 26, 1998, Northeast Empire Limited Partnership #2 filed certain information for three different quarters as required by the Commission's February 12, 1998 order in Docket No. ER98–1125–000.

On October 26, 1998, Washington Gas Energy Services, Inc. filed certain information as required by the Commission's October 18, 1996 order in Docket No. ER96–2830–000.

On October 26, 1998, DC Tie, Inc. filed certain information as required by the Commission's July 11, 1991 order in Docket No. ER91–435–000.

On October 26, 1998, GEN–SYS Energy filed certain information as required by the Commission's October 17, 1997 order in Docket No. ER97–4335–000.

On October 26, 1998, Power Fuels, Inc. filed certain information as required by the Commission's July 5, 1996 order in Docket No. ER96–1930–000.

On October 26, 1998, NGTS Energy Services filed certain information as required by the Commission's November 1, 1996 order in Docket No. ER96–2892–000.

On October 26, 1998, California Power Services filed certain information as required by the Commission's August 1, 1997 order in Docket No. ER97–3525–000.

On October 26, 1998, Northern Indiana Public Service Company filed certain information as required by the Commission's January 10, 1997 order in Docket No. ER97–458–000.

On October 26, 1998, Englehard Power Marketing, Inc. filed certain information as required by the Commission's December 29, 1994 order in Docket No. ER94–1690–000.

On October 26, 1998, PEC Energy Marketing, Inc. filed certain information as required by the Commission's June 12, 1997 order in Docket No. ER97–1431–000.

On October 26, 1998, DePere Energy LLC filed certain information as required by the Commission's October 31, 1997 order in Docket No. ER97–4586–000.

On October 26, 1998, DePere Energy Marketing, Inc. filed certain information as required by the Commission's June 12, 1997 order in Docket No. ER97–1432–000.

On October 26, 1998, Bollinger Energy filed certain information as required by the Commission's March 17, 1998 order in Docket No. ER98–1821–000.

On October 26, 1998, Wasatch Energy Corporation filed certain information as required by the Commission's March 10, 1997 order in Docket No. ER97–1248–000.

On October 26, 1998, Heartland Energy Services, Inc. filed certain information as required by the Commission's August 9, 1994 order in Docket No. ER94–108–000.

On October 26, 1998, NESI Power Marketing, Inc. filed certain information as required by the Commission's March 13, 1997 letter order in Docket No. ER97–841–000.

4. Northern Indiana Public Service Company

[Docket No. ER99–301–000]

Take notice that on October 26, 1998, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with El Paso Energy Marketing Company (EPEM).

Northern Indiana has requested an effective date of September 30, 1998.

Copies of this filing have been sent to EPEM, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Indiana Public Service Company

[Docket No. ER99–302–000]

Take notice that on October 26, 1998, Northern Indiana Public Service Company (Northern), tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Statoil Energy Trading, Inc., (SETI).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to SETI pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of October 30, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER99–303–000]

Take notice that on October 26, 1998, Northern Indiana Public Service Company (Northern), tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Northern States Power Company (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of October 30, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER99–304–000]

Take notice that on October 26, 1998, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Vitol Gas and Electric L.L.C. (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of October 30, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory

Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER99–305–000]

Take notice that on October 26, 1998, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Vitol Gas and Electric L.L.C., (Vitol Gas and Electric).

Northern Indiana has requested an effective date of October 30, 1998.

Copies of this filing have been sent to Vitol Gas and Electric, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER99–307–000]

Take notice that on October 26, 1998, Metropolitan Edison Company and Pennsylvania Electric Company submitted for filing an Electric Generation Supplier Coordination Tariff applicable to persons and/or entities licensed as electric generation suppliers to serve retail electricity customers under the Commonwealth of Pennsylvania's retail choice program.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER99–308–000]

Take notice that on October 26, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and St. Joseph Light and Power Company (SJL&P). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to SJL&P pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER99–309–000]

Take notice that on October 26, 1998, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Florida Light & Power and TransAlta Energy Marketing (U.S.), Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Ameren Services Company

[Docket No. ER99–310–000]

Take notice that on October 26, 1998, Ameren Services Company (ASC), the transmission provider, tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren CIPS, Entergy Power Marketing Corporation and Wabash Valley Power Association. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Services Company

[Docket No. ER99–311–000]

Take notice that on October 26, 1998, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Florida Power & Light, Consumers Energy Company and the Detroit Edison Company referred to collectively as the Michigan Companies, and TransAlta Energy Marketing (U.S.), Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Ameren Services Company

[Docket No. ER99–312–000]

Take notice that on October 26, 1998, Ameren Services Company (ASC), tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Entergy Power Marketing Corporation (EPM). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to EPM pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER99–313–000]

Take notice that on October 26, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and PG&E Energy Trading & Power LP (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on September 28, 1998.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER99–314–000]

Take notice that on October 26, 1998, Tampa Electric Company (Tampa Electric), tendered for filing a Contract for the Purchase and Sale of Power and Energy (Contract) between Tampa Electric and Virginia Electric and Power Company (VEPCO). The Contract provides for the negotiation of individual transactions in which Tampa Electric will sell power and energy to VEPCO.

Tampa Electric proposes an effective date of October 27, 1998, for the Contract, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on VEPCO and the Florida Public Service Commission.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER99–315–000]

Take notice that on October 26, 1998, New England Power Company (NEP), tendered for filing a Notice of Cancellation for its FERC Rate Schedule No. 439.

NEP requests an effective date for the cancellation of September 1, 1998.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER99–316–000]

Take notice that on October 26, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement (the MRSA) between Duke and DTE Energy Trading, Inc., dated as of October 7, 1998. The parties have not engaged in any transactions under the MRSA as of the date of filing.

Duke requests that the MRSA be made effective as of October 7, 1998.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER99–317–000]

Take notice that on October 26, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Southern Company Energy Marketing, L.P., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of October 26, 1998, the date of filing the Service Agreement.

Copies of the filing were served upon Southern Company Energy Marketing, L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Dynegy Power Services, Inc.

[Docket No. ER99–318–000]

Take notice that on October 26, 1998, Dynegy Power Services, Inc., tendered for filing a notice of succession regarding Destec Power Services, Inc., Rate Schedule FERC No. 1, effective June 18, 1998.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Peco Energy Company

[Docket No. ER99–319–000]

Take notice that on October 26, 1998, PECO Energy Company (PECO), filed a Service Agreement dated September 29, 1998 with CL Power Sales Seven, L.L.C. (CL SEVEN), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CL SEVEN as a customer under the Tariff.

PECO requests an effective date of September 29, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to CL SEVEN and to the Pennsylvania Public Utility Commission.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. PP&L, Inc.

[Docket No. ER99–320–000]

Take notice that on October 26, 1998, PP&L, Inc. (PP&L), filed with the Federal Energy Regulatory Commission a Form of Service Agreement for Sale of Capacity Credits.

PP&L requests an effective date of October 27, 1998, for the Form of Service Agreement For Sale of Capacity.

PP&L states that a copy of this filing has been provided to the Pennsylvania Public Utility Commission and the PJM Office of Interconnection.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. New York State Electric & Gas Corporation

[Docket No. ER99–321–000]

Take notice that on October 26, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 72 filed with FERC corresponding to an Agreement with the Municipal Board of the Village of Bath (the Village). The proposed amendment would increase revenues by $40.49 based on the twelve month period ending December 31, 1999.

This rate filing is made pursuant to Section 2 (a) through (c) of Article IV of the December 1, 1977, Facilities Agreement between NYSEG and the Village, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 1997. The revised facilities charge is levied on the cost of the tap facility constructed and owned by NYSEG to connect its 34.5 kV transmission line located in the Village to the Village's Fairview Drive Substation.

NYSEG requests an effective date of January 1, 1999.

Copies of the filing were served upon the Municipal Board of the Village of Bath and the Public Service Commission of the State of New York.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER99–322–000]

Take notice that on October 26, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62522, tendered for filing a Netting Agreement between Southern Company Energy Marketing, L.P. (Southern) and Illinois Power. The Netting Agreement principally provides that, during each month in which payments for wholesale power services are due, Illinois Power and ''Company'' will net the amounts owed by each party to the other, such that the only payment to be made will be by the party owing the difference between the two amounts.

Illinois Power has requested an effective date of October 13, 1998.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. New York State Electric & Gas Corporation

[Docket No. ER99–323–000]

Take notice that on October 26, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 117 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (the Cooperative). The proposed amendment would increase revenues by $641.18 based on the twelve month period ending December 31, 1999.

This rate filing is made pursuant to Section 1(c) and Section 3 (a) through (c) of Article IV of the June 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 1997. The revised facilities charge is levied on the cost of the 34.5 kV tie line from Taylor Road to the Jefferson

Substation, constructed by NYSEG for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 1999.

Copies of the filing were served upon the Delaware County Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Leslie H. Everett, Linda Y.H. Cheng, Eric A. Montizambert, Gabriel B. Togneri

[Docket Nos. ID–3145–002, ID–3146–002, ID–3148–002 and ID–3149–002]

Take notice that on October 23, 1998, Pacific Gas and Electric Company filed a Notice of Changes, with respect to the above-captioned dockets, pursuant to 18 CFR 45.5. The changes are as follows:

Leslie H. Everett, PG&E Energy Trading, Secretary

Linda Y.H. Cheng, PG&E Energy Trading, Assistant Secretary

Eric A. Montizambert, PG&E Energy Trading, Assistant Secretary

Gabriel B. Togneri, PG&E Energy Trading, Assistant Treasurer

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. OA96–138–006]

Take notice that on October 27, 1998, Consolidated Edison Company of New York, Inc. tendered for filing with the Commission its report of refunds made in compliance with the Commission's September 18, 1998 letter order in this proceeding. The letter order approved settlement rates for open access transmission service by Con Edison effective on July 9, 1996.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Vulcan/BN Geothermal Power Company (Vulcan Facility)

[Docket No. QF85–199–005]

On October 26, 1998, Vulcan/BN Geothermal Power Company, 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was previously self-certified as a qualifying small power production facility in 1985 in Docket No. QF85–199–000. The Commission certified the facility in 1988, in Docket No. QF85–199–001. The facility was self-recertified in Docket Nos. QF85–199–003 and 004. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

29. Elmore, L.P.

[Docket No. QF86–647–005]

On October 26, 1998, Elmore, L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for rectification of a facility as a qualifying small power production facility pursuant to § 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was previously self-certified as a qualifying small power production facility in 1986, in Docket No. QF86–647–000. The Commission certified the facility in 1988, in Docket No. QF86–647–001. The facility was self-recertified in Docket Nos. QF86–590–002, –003 and –004. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

30. Del Ranch, L.P.

[Docket No. QF86–727–006]

On October 26, 1998, Del Ranch, L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was previously self-certified as a qualifying small power production facility in 1986 in Docket No. QF86–727–000. The Commission certified the facility in 1988 in Docket No. QF86–727–001. The facility was later self-recertified in Docket No. QF86–727–002 and –005. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

31. Power Resources, Inc. (PRI Project)

[Docket No. QF86–930–005]

On October 26, 1998, Power Resources, Inc., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on October 10, 1986 in Docket No. QF86–930–000 and recertified the facility on March 14, 1989 in Docket No. QF86–930–003. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

32. Salton Sea Power Generation L.P. (Salton Sea III Facility)

[Docket No. QF86–1043–004]

On October 26, 1998, Salton Sea Power Generation L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) and (2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was previously self-certified as a qualifying small power production facility in 1986 in Docket No. QF86–1043–000 and again self-certified in Docket Nos. QF86–1043–002 and 003. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

33. Salton Sea Power Generation L.P. (Salton Sea I Facility)

[Docket No. QF87–511–005]

On October 26, 1998, Salton Sea Power Generation L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) and (d)(2) (1998) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Facility was previously self-certified as a qualifying small power production facility in 1987 in Docket No. QF87–511–000 and self-recertified in Docket Nos. QF87–511–003 and 004. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

34. Leathers, L.P.

[Docket No. QF88–543–003]

On October 26, 1998, Leathers, L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying small power production facility in 1989 in Docket No. QF88–543–000. The facility was self-recertified in Docket Nos. QF88–543–001 and –002. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

35. Saranac Power Partners L.P.

[Docket No. QF90–114–006]

On October 26, 1998, Saranac Power Partners L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on June 5, 1990, in Docket No. QF90–114–000 and recertified the facility in Docket Nos. QF90–114–002. The Facility was self-recertified in Docket Nos. QF90–114–003, –004 and –005. Recertification is being sought to reflect a change in the status of one of the owners of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

36. Yuma Cogeneration Associates

[Docket No. QF90–143–003]

On October 26, 1998, Yuma Cogeneration Associates, 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on January 27, 1992 in Docket No. QF90–143–000 and recertified the facility on November 10, 1993 in Docket No. QF90–143–001. Recertification is being sought to reflect a change in the status of one of the owners of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

37. Salton Sea Power Generation, L.P. Fish Lake Power Company (Salton Sea IV Facility)

[Docket No. QF95–9–002]

On October 26, 1998, Salton Sea Power Generation, L.P., and Fish Lake Power Company, 302 South 36th Street, Suite 400, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Notices of qualifying status of a small production facility were previously filed in connection with this facility in Docket Nos. QF95–9–000 and QF95–9–001. Recertification is being sought in contemplation of changes in the ownership of the facility.

Comment date: 30 days after publication of this notice in the **Federal Register,** in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29867 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–324–000, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

October 30, 1998.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER99–324–000]

Take notice that on October 26, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a form of network integration transmission service agreement between itself and its merchant, Wisconsin Electric Power Marketing (WEPM). The agreement updates a similar agreement submitted in Docket No. ER97–4198, which established WEPM as a customer under Wisconsin Energy Corporation Operating Companies' transmission service tariff (FERC Electric Tariff, Original Volume No. 1).

Wisconsin Electric respectfully requests an effective date sixty days after filing. Wisconsin Electric is authorized to state that WEPM joins in the requested effective date.

Copies of the filing have been served on WEPM, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. MAC Power Marketing, L.L.C., Minnesota Power, Inc., NRG Power Marketing Inc., Wilson Power & Gas Smart, Inc., First Energy Trading and Power Marketing, Inc., Micah Tech Industries, Inc., Energetix, Inc. and IEP Power Marketing, LLC

[Docket Nos. ER98–575–002, ER99–326–000, ER97–4281–004, ER95–751–015, Docket No. ER95–1295–010, ER98–1221–001, ER97–3556–005, and ER95–802–014]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 26, 1998, MAC Power Marketing, L.L.C. filed certain information as required by the Commission's December 16, 1997 order in Docket No. ER98–575–000.

On October 26, 1998, Minnesota Power, Inc. filed certain information as required by the Commission's July 15, 1996 order in Docket No. ER96–1823–000.

On October 26, 1998, NRG Power Marketing Inc. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4281–000.

On October 26, 1998, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 25, 1996 order in Docket No. ER95–751–000.

On October 26, 1998, FirstEnergy Trading and Power Marketing, Inc. filed certain information as required by the Commission's September 27, 1996 order in Docket No. ER95–1295-000.

On October 26, 1998, Micah Tech Industries, Inc. filed certain information as required by the Commission's March 19, 1998 order in Docket No. ER98–1221–000.

On October 26, 1998, Energetix, Inc. filed certain information as required by the Commission's September 12, 1997 order in Docket No. ER97–3556–000.

On October 26, 1998, IEP Power Marketing, LLC filed certain information as required by the Commission's March 11, 1995 order in Docket No. ER95–802–000.

3. Eastern Pacific Energy, Eastern Pacific Energy, Zapco Power Marketers, Inc., American Energy Trading, Inc., PanCanadian Energy Services Inc., Bangor Energy Resale, Inc., Indeck-Pepperell Power Associates, Inc., Rochester Gas and Electric Corporation, Westchester RESCO Company, L.P., Florida Power & Light Company, NGE Generation, Inc., Wicor Energy Services, Inc., Global Energy Services, LLC, Burlington Resources Trading, Inc., Global Petroleum Corp. and PS Energy Group, Inc.

[Docket Nos. ER98–1829–002, ER98–1829–003, ER98–689–003, ER97–360–008, ER90–168–039, ER98–459–004, ER96–1635–007, ER99–338–000, ER99–337–000, ER99–336–000, ER99–330–000, ER96–34–012, ER97–1177–006, ER96–3112–008, ER96–359–013, and ER95–266–015]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 27, 1998, Eastern Pacific Energy filed certain information for the second and third quarter as required by the Commission's March 25, 1998 order in Docket No. ER98–1829–000.

On October 27, 1998, Zapco Power Marketers, Inc. filed certain information as required by the Commission's December 29, 1998 order in Docket No. ER98–689–000.

On October 27, 1998, American Energy Trading, Inc. filed certain information as required by the Commission's December 5, 1996 letter order in Docket No. ER97–360–000.

On October 27, 1998, PanCanadian Energy Services Inc. filed certain information as required by the Commission's March 20, 1990 order in Docket No. ER90–168–000.

On October 27, 1998, Bangor Energy Resale, Inc. filed certain information as required by the Commission's December 23, 1997 order in Docket No. ER98–459–000.

On October 27, 1998, Indeck-Pepperell Power Associates, Inc. filed certain information as required by the Commission's July 15, 1996 letter order in Docket No. ER96–1635–000.

On October 27, 1998, Rochester Gas and Electric Corporation filed certain information as required by the Commission's September 12, 1997 order in Docket No. ER97–3553–000.

On October 27, 1998, Westchester RESCO Company, L.P. filed certain information as required by the Commission's June 18, 1998 order in Docket No. ER98–3030–000.

On October 27, 1998, Florida Power & Light Company filed certain information as required by the Commission's October 29, 1997 order in Docket No. ER97–3359–000.

On October 27, 1998, NGE Generation, Inc. filed certain information as required by the Commission's June 9, 1997 order in Docket No. ER97–2518–000.

On October 27, 1998, Wicor Energy Services, Inc. filed certain information as required by the Commission's November 9, 1995 letter order in Docket No. ER96–34–000.

On October 27, 1998, Global Energy, Services, LLC filed certain information as required by the Commission's March 12, 1997 letter order in Docket No. ER97–1177–000.

On October 27, 1998, Burlington Resources Trading Inc. filed certain information as required by the Commission's November 14, 1996 letter order in Docket No. ER96–3112–000.

On October 27, 1998, Global Petroleum Corp. filed certain information as required by the Commission's December 20, 1995 letter order in Docket No. ER96–359–000.

On October 27, 1998, PS Energy Group, Inc. filed certain information as required by the Commission's January 18, 1995 letter order in Docket No. ER95–266–000.

4. Indiana Michigan Power Company

[Docket No. ER99–325–000]

Take notice that on October 26, 1998, Indiana Michigan Power Company (I&M), tendered for filing with the Commission a Facilities and Operations Agreement between the City of Sturgis, Michigan (Sturgis), and I&M (Agreement).

I&M requests that the Agreement be made effective as of May 23, 1998, and states that a copy of its filing was served upon Sturgis, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER99–327–000]

Take notice that on October 26, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the state regulatory commissions within the PJM Control Area.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation as Agent for the AEP Operating Companies, Ohio Power Company

[Docket No. ER99–328–000]

Take notice that on October 27, 1998, American Electric Power Service Corporation, as agent for the AEP Operating Companies (AEP), tendered for filing with the Commission executed Service Agreements with each of the following Ohio Municipal Resale Service (MRS) customers of Ohio Power Company: Arcadia, Bloomdale, Carey, Cygnet, Plymouth, Republic, St. Clairsville, Shiloh, Sycamore, Wapakoneta, Wharton, Greenwich, Ohio City, Clyde, Bryan and Deshler, under the Wholesale Market Tariff of the AEP Companies; and that Ohio Power Company (OPCO) tendered for filing with the Commission: (1) a request for waiver of the Commission's fuel adjustment clause regulations to effectuate an agreement between OPCO and the MRS customers governing the remainder of the MRS customers' service contracts with OPCO; and (2) a notice of cancellation of Ohio Power Company's Municipal Resale Electric Tariff MRS, which is on file with the Commission as FERC Rate Schedule OPCO No. 001. AEP requests that each Service Agreement be made effective as of the date following the expiration of each MRS customer's current service contract with OPCO. OPCO requests that the notice of cancellation be made effective January 1, 2000, the day after the latest termination date of OPCO's service contracts with the MRS customers.

AEP states that a copy of its filing was served upon the MRS customers, the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Mississippi Power Company

[Docket No. ER99–329–000]

Take notice that on October 27, 1998, Mississippi Power Company and Southern Company Services, Inc., its agent, tendered for filing an amendment to its Service Agreement, pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff, with South Mississippi Electric Power Association for the Wellman Delivery Point to Coast Electric Power Association. The amendment relates to wholesale electric service to South Mississippi Electric Power Association.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–331–000]

Take notice that on October 27, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and UtiliCorp United Inc.

NSP requests that the Commission accept both the agreements effective September 30, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Washington Water Power Company

[Docket No. ER99–332–000]

Take notice that on October 27, 1998, Washington Water Power (WWP), tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with WPS Energy Services.

WWP requests waiver of the prior notice requirement and requests an effective date of July 9, 1998.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER99–334–000]

Take notice that on October 27, 1998, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Columbia Energy Power Marketing Corporation (CEPMC), and Merchant Energy Group of the Americas, Inc. (MEGA), as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon CEPMC, MEGA, and the South Carolina Public Service Commission.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Public Service Company

[Docket No. ER99–335–000]

Take notice that on October 27, 1998, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with Constellation Power Source, Inc.

Comment date: November 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Electric Company

[Docket No. ES99–5–000]

Take notice that on October 20, 1998, Commonwealth Electric Company filed an application under Section 204 of the Federal Power Act, seeking authorization to issue not more than $80 million of short-term debt during a two year period commencing on the effective authorization date and maturing less than one year after the date of issuance.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northwestern Corporation

[Docket No. ES99–6–000]

Take notice that on October 22, 1998 Northwestern Corporation submitted an application under Section 204 of the Federal Power Act for authorization to issue short-term debt in an aggregate principal amount of not more than $500 million during the period of two years starting with the date of the letter order.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Oklahoma Gas and Electric Company

[Docket No. ES99–7–000]

Take notice that on October 26, 1998, Oklahoma Gas and Electric Company filed an application with the Federal Energy Regulatory Commission under Section 204 of the Federal Power Act requesting authorization to issue not more than $400,000,000 of short-term

debt on or before December 31, 2000, with a final maturity no later than December 31, 2001.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. OA97–440–002]

Take notice that on October 27, 1998, pursuant to the Order on Standards of Conduct, issued by the Federal Energy Regulatory Commission on September 29, 1998, PECO Energy Company (PECO) submitted its compliance filing. PECO identifies all senior transmission/reliability and wholesale merchant function employees, as well as energy management system information its wholesale merchant arm receives.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29892 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

November 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* P–2004–073.

c. *Date Filed:* September 2, 1997.

d. *Applicant:* Holyoke Water Power Company.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:*

William J. Nadeau, Vice President, Holyoke Water Power Company, P.O. Box 270, Hartford, CT 06141–0270, (860) 665–5315.

James J. Kearns, Project Manager, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, (860) 665–5936.

Catherine E. Shively, Counsel, Public Service Company of New Hampshire, 1000 Elm Street, Manchester, NH 03105, (603) 634–2326.

i. *FERC Contact:* Allan Creamer (202) 219–0365.

j. *Comment Date:* See attached paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted, and, pursuant to § 4.30(b)(25), is ready for environmental analysis at this time—see attached paragraph D10. The Commission acknowledges that information related to water quality studies in the project's bypassed reach has not been filed. However, the study itself has been completed, and is currently being reviewed by various resource agencies. This information, including agency comments, is expected to be filed by November 15, 1998. The results of the water quality study, as well as any other information asked for during the environmental analysis, will be considered during the preparation of the environmental impact statement once it's been filed with the Commission. The application and additional information is substantially complete, and the environmental analysis will proceed on the issues as set forth in Scoping Document 2 and in the application materials.

l. *Description of Project:* The proposed run-of-river project would consist of the following features: (1) an approximately 1,000-foot-long masonry dam to elevation 97.47 feet National Geodetic Vertical datum, topped with a 3.1-foot-high rubber dam; (2) upstream and downstream fish passage facilities; (3) a 2,290-acre reservoir that extends approximately 25 miles upstream; (4) a three-level canal system adjacent to the river with headgates at the dam; (5) six separate hydroelectric facilities, named Hadley Falls Station, Riverside Station, Boatlick Station, Beebe-Holbrook Units, Skinner Unit and Chemical Units, and except for the Hadley Falls Station which has its intake structure adjacent to the canal headgate structure, the facilities withdraw water from the canal system; (6) a total nameplate capacity of 43,756 kilowatts; (7) transmission line connections; and (8) appurtenant facilities. The estimated average annual generation is about 223,389 megawatt-hours.

m. *Purpose of Project;* The power generated by the project is used for station service on site and sold to industrial customers in Holyoke, with the remainder transmitted to other utilities for resale outside of Holyoke.

n. *This notice also consists of the following standard paragraphs:* D10.

o. *Avaliable Locations of Application:* A copy of the application, as supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at Holyoke Water Power Company, 1 Canal Street, Holyoke, Massachusetts 01040, (413) 536–9428.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions

or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 98–29883 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Application for Non-Project Use of Project Lands and Waters

November 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project Name:* Catawba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–375.

d. *Date Filed:* October 1, 1998.

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Iredell County, North Carolina on Lake Norman.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brian Romanek, (202) 219–3076.

j. *Comment Date:* December 12, 1998.

k. *Description of the filing:* Duke Energy Corporation proposes to lease to the Pointe on Lake Norman, LLC (The Pointe) four parcels containing a total of 25.2516 acres of project land for the construction of twenty four commercial/residential marinas with a total of 558 boat slips. The marinas would provide access to the reservoir for residents of The Pointe Subdivision. Constructing the marinas would require the dredging of 121,911 cubic yards of material and installing 9,486 linear feet of rip rap for stabilization of shoreline areas. An approximately 500-foot-long, 24-inch-diameter irrigation pipe connected to an existing pump station is also proposed to be installed into the lake bottom. The pump station (capable of withdrawing 2,000 gallons per minute) would withdraw water from the Lake to irrigate the golf course.

l. *This notice also consists of the following standard paragraphs:* B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–29884 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Application Ready for Environmental Analysis

November 3, 1998.

a. *Type of Application:* Major New License.

b. *Project No.:* P–11607–000.

c. *Date Filed:* August 29, 1997, as amended on January 30, 1998.

d. *Competing Applicant(s):* Holyoke Gas & Electric Department, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Competing Applicant(s) Contact:*

George E. Leary, Manager, Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, MA 01040 (413) 536–9311.

Roger W. Bacon, Director, Power Services Division, Mass. Municipal Wholesale Elec. Company, Randall Road, P.O. Box 426, Ludlow, MA 01056, (413) 589–1041

Stanley Herriott, General Manager, Ashburnham Municipal Light Plant, 78 Central Street, P.O. Box 823, Ashburnham, MA 01430, (508) 827–4423.

i. *FERC Contact:* Allan Creamer (202) 219–0365.

j. *Comment Date:* See attached paragraph D10.

k. *Status of Environmental Analysis:* This application, as amended, has been accepted, and, pursuant to § 4.30(b)(25), is ready for environmental at this time—see attached paragraph D10. The Commission acknowledges that information related to water quality studies in the project's bypassed reach has not been filed. However, the study itself has been completed, and is currently being reviewed by various resource agencies. This information, including agency comments, is expected to be filed by November 15, 1998. The results of the water quality study, as well as any other information asked for

during the environmental analysis, will be considered during the preparation of the environmental impact statement once it's been filed with the Commission. The application and additional information is substantially complete, and the environmental analysis will proceed on the issues as set forth in Scoping Document 2 and in the application materials.

l. *Description of Project:* The proposed run-of-river project would consist of the following features: (1) an approximately 1,000-foot-long masonry dam to elevation 97.47 feet National Geodetic Vertical datum, topped with a 3.1-foot-high rubber dam; (2) upstream and downstream fish passage facilities; (3) the Fish Lift Park adjoining the dam; (4) a 2,290-acre reservoir that extends approximately 25 miles upstream; (5) a three-level canal system adjacent to the river with headgates at the dam; (6) six separate hydroelectric facilities, named Hadley Falls Station, Riverside Station, Boatlock Station, Beebe-Holbrook Units, Skinner Unit and Chemical Units, and except for the Hadley Falls Station which has its intake structure adjacent to the canal headgate structure, the facilities withdraw water from the canal system; (7) a total nameplate capacity of 58,756 kilowatts (kW), consisting of the existing 43,756 kW project plus a 15,000 kW expansion at the Hadley Falls Station; (8) transmission line connections; and (9) appurtenant facilities. The estimated average annual generation is about 212,000 megawatt-hours (MWh), which would increase to about 262,750 MWh after completing the expansion in 2006.

m. *Purpose of Project:* The power generated by the project would be used within the Holyoke Gas & Electric Department's distribution system, with a portion sold to the Massachusetts Municipal Wholesale Electric Company.

n. *This notice also consists of the following standard paragraphs:* D10.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. Copies are also available for inspection and reproduction at the Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, Massachusetts, 01040.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 98–29885 Filed 11–6–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6186–7]

Notice of Availability of Draft RCRA Waste Minimization PBT Chemical List

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: Today's notice makes available for public comment a list of 53 persistent, bioaccumulative, and toxic (PBT) chemicals and chemical categories which may be found in hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA). This notice responds to States, industry organizations, environmental groups, and individuals who commented on the EPA's national RCRA waste minimization policy, and it will be used to promote voluntary waste minimization efforts which reduce the generation of PBT chemicals found in RCRA hazardous waste by at least half by the year 2005.

EPA requests comment on today's RCRA Waste Minimization PBT Chemical List (also referred to as the RCRA PBT List) and the methodology used to develop today's List. EPA is not seeking comment on the Waste Minimization Prioritization Tool (WMPT), which is discussed in today's notice, because the Agency has sought extensive public review and comment on the WMPT in a previous notice. Particular issues for comment are identified in the discussion that follows.

EPA will publish a final RCRA PBT List in 1999. This notice and the final RCRA PBT List are a significant component of an overall PBT strategy being developed by Agency. The overall strategy will encompass the PBT priorities and programs identified by other EPA offices, particularly those that cannot be addressed by single media controls and approaches.

DATES: Please submit written comments by January 8, 1999 to the address below.

TO OBTAIN COPIES: Copies of the draft list and all documents cited in this notice can be obtained by calling the RCRA/Superfund/CERCLA Hotline at (800) 424–9346, TDD (800) 553–7672 (hearing impaired), or (703) 412–9810 in the Washington, DC metropolitan area, from 9:00 a.m. until 6:00 p.m. Eastern time.

The draft list and supporting documents are also available in electronic format on the Internet, and can be obtained by accessing:

WWW: http://www.epa.gov/wastemin
FTP: ftp.epa/gov
Login: anonymous

Password: your Internet address

TO SUBMIT COMMENTS: Please send an original and two copies of comments, referencing docket number F–98–MMLP–FFFFF, to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address provided below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–MMLP–FFFFF. All electronic comments must be submitted as an ASCII file that contains no special characters or any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). CBI submissions must be sent under separate cover, and must include an original and two copies. CBI must be addressed to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street SW, Washington, DC 20460.

Public comments (not including CBI) and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For further information on waste minimization, specific aspects of this notice, or public meetings regarding this notice, contact the RCRA/Superfund/EPCRA Hotline at the address and telephone numbers cited above, or Newman Smith at the U.S. Environmental Protection Agency, Office of Solid Waste, Waste Minimization Branch, 401 M Street, SW (5302W), Washington, DC 20460; telephone: (703) 308–8757, fax: (703) 308–8433.

SUPPLEMENTARY INFORMATION:

I. Background

A. Why Is EPA Taking This Action?

EPA regulates thousands of chemicals and wastes under its multiple environmental authorities, and has worked with States, the regulated community, environmental groups, and individuals to make significant progress in controlling harmful chemical releases to the environment. Notwithstanding this important progress, recent national and international attention has focused on persistent, bioaccumulative and toxic (PBT) chemicals which can pose long-term problems when released to the environment. Today's notice focuses national attention on identifying ways to reduce the generation of PBT chemicals which may be found in hazardous wastes regulated under RCRA.

Today's notice provides a mechanism for implementing the national waste minimization policy of RCRA—to reduce or eliminate the generation of hazardous waste, wherever feasible, and as expeditiously as possible. This national policy sets a clear preference for source reduction and recycling methods over end-of-pipe waste treatment and disposal methods to reduce releases of harmful chemicals to the environment. In 1988, the General Accounting Office (GAO) encouraged EPA to focus on reducing the toxicity as well as the volume of hazardous waste, and recommended that EPA ''establish specific, quantifiable waste minimization goals.[1]''

Congress expanded this national policy in the Pollution Prevention Act of 1990, and in Clean Air Act amendments of 1990. As Congress stated in the Pollution Prevention Act, ''there are significant opportunities for industry to reduce or prevent pollution at the source through cost effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.'' The Clean Air Act promotes pollution prevention as a national goal, and includes pollution prevention as an important element in setting and achieving industrial emissions control standards.

EPA recognizes that progress has been made in reducing volumes of hazardous wastes. However, today's notice expands EPA's focus to reducing the toxicity of hazardous wastes, in addition to the volume, by reducing RCRA PBT chemical generation at the source, rather than relying on reducing the volume and/or toxicity of hazardous waste through waste treatment alone. This ''PBT chemical'' approach, which is now being addressed at the international level, recognizes that small releases of PBT chemicals, even releases that are in compliance with existing regulations, may nevertheless cause a build up of human health or ecological problems over the long term.

Today's notice also responds to extensive comments EPA received from industry organizations, environmental groups, government agencies, and individuals during stakeholder meetings held during 1993 and 1994 to develop RCRA's Waste Minimization National Plan. Six principles for reducing hazardous waste generation on a national level emerged from those discussions:

- Focus on source reduction as the preferred means of environmental management, and recycling as the second preference, over treatment and disposal of hazardous wastes;
- Set environmental priorities based on risk;
- Focus on reducing the chemical composition of hazardous waste, not the volume of hazardous wastes, and carefully consider the interrelationships between hazardous waste reduction and the reduction of toxic releases to air and water;
- Set environmental goals for source reduction and recycling of priority chemicals, and track progress toward these goals. Promote accountability and recognition for regulated companies, government agencies, and other stakeholders involved in the process;
- Provide flexibility to industry and States in the selection of chemical priorities, goals for source reduction and recycling of priority chemicals, and in selecting approaches for achieving source reduction and recycling goals; and
- Involve the public.

As a result of these discussions, EPA published the Waste Minimization National Plan[2] (WMNP), which commits the Agency to implementing a national waste minimization program centered around these principles. Most importantly, the WMNP sets national goals to:

- Reduce, as a nation, the presence of the most persistent, bioaccumulative, and toxic (PBT) chemicals in RCRA hazardous wastes 10% by the year 2000, and at least 50 percent by the year 2005 (from a 1991 baseline);
- Promote source reduction (and recycling where RCRA PBT chemicals can not be reduced at the source) over treatment and disposal technologies; and

[1] New Approach Needed to Manage the Resource Conservation and Recovery Act; p. 57; United States General Accounting Office Report to Congress; July 1988.

[2] Waste Minimization National Plan, US EPA, 1994. EPA530–R–94–045.

• Avoid the transfer of RCRA PBT chemicals across environmental media.

EPA believes today's notice provides a strong foundation for achieving these goals. The next section describes more specifically how EPA, State governments, industry organizations, environmental groups and citizens may participate in achieving these goals.

B. What Are Persistent, Bioaccumulative, and Toxic (PBT) Chemicals, and Why Are They an Environmental Concern?

PBT chemicals exhibit varying degrees of three properties: Persistent (P) chemicals do not readily break down in the environment; bioaccumulative (B) chemicals are not easily metabolized and can accumulate in human or ecological foodchains through consumption or uptake; toxic (T) chemicals may be hazardous to human health or the environment in a variety of ways, depending on the chemical and the organism that is exposed. Examples of toxic effects include cancer and birth defects in humans and reduced populations and altered community structures within ecosystems. Individual chemicals may exhibit none, some, or all of these characteristics. Chemicals which exhibit PBT characteristics, once released to the environment, may present increasing long-term toxic effects to human health and the environment, even when these chemicals are released in small quantities.

RCRA PBT chemicals could be released to the environment from several types of sources, including: Leaks from hazardous waste treatment, storage or disposal units, authorized releases of PBTs in treated hazardous wastes (e.g., combustion emissions or residues which must be treated to levels which minimize threats to human health and the environment prior to land disposal), or the combined effect of *de minimis* releases of PBT chemicals permitted under multiple permitting authorities. Because of the potential risks posed by these chemicals, the international community recognizes the chemicals as a global environmental concern. EPA is creating a priority in its hazardous waste minimization program for these chemicals.

C. How Will EPA and Other Stakeholders Use the RCRA PBT List?

EPA will use the RCRA PBT List to:

• Measure progress toward the national goal of reducing the generation of RCRA PBT chemicals by at least half by the year 2005. EPA will measure progress using data reported to the national Toxics Release Inventory (TRI) and other nationally available data;

• Report national progress on a periodic basis;

• Identify and acknowledge industrial sectors which contribute to national progress; and

• Promote coordinated waste minimization programs at the Federal, State, and local level.

EPA's 1986 Waste Minimization Report to Congress [3] concluded that promoting voluntary (rather than mandatory) waste minimization mechanisms would be the most effective means of reducing the volume and/or toxicity of RCRA regulated hazardous waste stream generation. Therefore, EPA will rely on voluntary activities to promote the reductions of RCRA PBT chemicals in hazardous waste, recognizing that some voluntary activities may ultimately take place in conjunction with a regulatory activity (e.g., voluntarily implementing pollution prevention measures to meet permit compliance requirements).

EPA will use the TRI as its primary source of data to measure and evaluate progress toward the national goal of reducing the presence of PBT chemicals in RCRA hazardous wastes by at least half by 2005. The BRS will be used to provide supplemental information and analysis. As discussed further below, the method for reporting progress is under development, and will build on the method described in today's notice for estimating the presence of PBT chemicals in RCRA hazardous wastes.

EPA is committing to its national RCRA PBT reduction goal to meet the requirements of the Government Performance and Results Act (GPRA). The GPRA sets government-wide requirements to improve performance of government programs by ''managing for results'' and linking programmatic budgets to performance. EPA believes its effort to reduce long term human health and ecological problems by reducing the generation of RCRA related PBT chemicals at the source is a crucial GPRA goal.

EPA will work with interested States, industry organizations, environmental groups, and citizens to promote a variety of source reduction opportunities and programs which reduce the generation of RCRA PBT chemicals at the source. For example, during informal discussions, some States, companies, citizens, and other interested parties indicated they could use the RCRA PBT List as a guide for setting waste minimization priorities for wastes which are currently treated or disposed. Government agencies could use the List as a starting point to identify industrial sectors or particular chemicals for focusing voluntary pollution prevention technical assistance resources. Industry trade associations or individual companies could use the list for setting waste minimization priorities and reducing waste management costs. Individual organizations or a consortium of organizations could use the RCRA PBT list to develop Project XL proposals in cases where significant reductions in the generation of RCRA PBT chemicals are possible, but regulatory flexibility is needed to achieve the reductions (information on Project XL is available on the Internet at www.epa.gov/projectxl). Citizen groups might use the RCRA PBT list to promote pollution prevention as a preferred environmental solution over waste treatment or disposal at siting hearings or other public comment or waste management forums.

EPA will also report national progress toward meeting national goals publicly, on a periodic basis, to encourage accountability.

D. How Will EPA Measure Progress Toward the National RCRA Hazardous Waste PBT Reduction Goal?

EPA is considering several alternatives for developing a national RCRA hazardous waste PBT chemical reduction measurement method. One of the key factors in developing a measurement method is the selection of an appropriate national database for reporting, storing and retrieving data on PBT chemicals found in RCRA hazardous waste. EPA considered, among others, two widely used national databases, the RCRA hazardous waste Biennial Reporting System (BRS) and the Toxics Release Inventory (TRI), and selected the TRI as the primary database for measuring national PBT chemical reductions in hazardous waste. The TRI is a publicly accepted and widely used source of data on toxic chemicals being used, manufactured, treated, transported, and/or released to the environment. TRI reports information on specific chemicals which may be contained in waste. Using chemical-specific TRI information enables EPA to measure reductions of chemical quantities found in wastes over time. In contrast, the Biennial Reporting System provides information on waste stream volumes, rather than chemical specific data, and will be used for supplemental analysis in cases for chemicals which are on the RCRA PBT List, but which are not reported in the TRI.

[3] Minimization of Hazardous Waste Report to Congress, October 1986, EPA–530–SW–86–033.

The measurement method will include only those facilities which report data to the TRI data, and who are also RCRA hazardous waste generators. EPA will publish and seek public comment on its draft measurement method in 1999.

EPA will submit national interim progress reports as part of its environmental performance reporting under the Government Performance and Results Act. A final national progress report will be submitted for the year 2005.

E. How Will EPA Encourage Progress Toward the National RCRA PBT Reduction Goals?

EPA will work with States, industry, environmental groups and other stakeholders to identify and implement a variety of implementation approaches, including workshops, technical assistance, progress reporting, partnership agreements, and regulatory reinvention and pilot projects, to promote progress toward the national RCRA PBT reduction goal. To encourage stakeholder input, EPA will conduct public meetings to listen to stakeholder comments on the List and on technical and programmatic measures which could be used to reduce the generation of PBT chemicals. Information regarding public meetings can be obtained by contacting Newman Smith by phone at (703) 308–8757, or on the Internet at smith.newman@epa.gov. EPA will combine the efforts of these interested parties into a draft national RCRA PBT reduction implementation strategy in mid-1999. EPA will solicit public comment on the draft strategy and will publish a final implementation strategy later in 1999.

After publication of the final implementation strategy, EPA will continue to work with interested parties to promote and document source reduction and recycling successes, and measure and report progress, as stated above.

F. How is Today's RCRA PBT List Different From Other Chemical Lists?

Today's draft RCRA PBT list differs from other lists, including those used in the RCRA program, because of its purpose and design. Today's draft RCRA PBT list:

- Focuses on reducing RCRA PBT chemicals at the point of generation, before they are stored, transported, treated, recycled, or disposed on the land. Other regulatory lists are often used to set treatment technology standards, or concentration based limits on chemicals after treatment;
- Focuses on long-term human health and ecological problems, rather than more short term or acute human health or ecological effects.
- Will be used as a voluntary guide for identifying national waste minimization priorities and measuring national reduction progress, and may be used flexibly by other government agencies and companies. It is not a regulatory list that must be adhered to by all stakeholders.

The basis for developing the RCRA PBT list is explained in the following sections of this notice.

G. Why Focus on the Reduction of RCRA PBT Wastes at the Point of Hazardous Waste Generation Rather Than After Treatment?

Nearly all of the regulations promulgated under the RCRA program set standards for safe management or cleanup of hazardous wastes after they are generated or managed. To meet these standards, the regulated community has frequently used ''end-of-pipe'' treatment and control technologies. Significant progress has been made using ''end-of-pipe'' technologies, even though the costs are significant, and they do not completely eliminate releases of toxic chemicals to the environment.

To address these issues, government agencies and the regulated community have increased their focus on the use of source reduction and recycling measures in place of, or as a supplement to, end-of-pipe technologies to meet or exceed regulatory requirements and to reduce the costs of waste management.

The organizations and individuals involved in the development of the Waste Minimization National Plan strongly urged EPA to promote source reduction and recycling over waste treatment and disposal to reduce or eliminate the potential long term effects of RCRA PBT chemicals which may build up in the environment. They recognized that, even with stringent waste management standards, waste management units may fail, accidents may occur during transport and handling, and *de minimis* authorized releases may, nevertheless, occur. As a result, although many sources of these chemicals may individually be in compliance with hazardous waste and other regulations, RCRA PBT chemicals may continue to be released and build up in the environment. Reducing RCRA PBT chemical generation at the source is a more certain way of reducing or eliminating potential RCRA PBT risks to the environment, while reducing or eliminating the costs of managing wastes.

H. How Will EPA Work With States, Industries, and Other Interested Parties Who Have Different Priorities?

EPA encourages Federal government agencies, States, the regulated community and other organizations to incorporate the priorities contained in today's proposed RCRA PBT list in their current environmental priorities and programs. EPA is aware that some organizations have chemical reduction priorities which differ in varying degrees from today's List. Examples of chemical priority lists from 15 State, tribal and international organizations are in the docket for today's notice. Based on a comparison of these lists with today's draft RCRA PBT List, EPA believes many organizations will find chemicals that are common to their own and today's List.

EPA believes establishing common priorities provides an opportunity for progress toward the national RCRA PBT reduction goal. Therefore, EPA will actively work with States, industry, environmental groups and other interested parties to identify and integrate, to the extent possible, common RCRA PBT reduction priorities and multimedia implementation approaches to promote progress toward the national RCRA PBT chemical reduction goals.

EPA believes States should use flexibility available through the National Environmental Performance Partnership System (NEPPS) to address priorities for multi-media, multi-programmatic environmental protection, including the priorities contained in today's List. EPA has included a goal, similar to the WMNP goal, as a Core Performance Measure in the NEPPS program. This goal seeks to ''decrease the quantity of waste generated, decrease the toxicity of waste generated, and increase recycling of wastes.

II. Waste Minimization Prioritization Tool Revisions and Information Stewardship

A. What is the Waste Minimization Prioritization Tool? When and How Was it Revised?

The Waste Minimization Prioritization Tool (WMPT), a Windows-based chemical hazard screening tool developed by EPA, generates relative rankings of chemicals based on their potential to cause chronic human health and ecological problems. The WMPT generates rankings based on four sets of chemical properties, including: Chemical persistence, bioaccumulation potential, chronic human and ecological toxicity, and chemical mass. The last property,

chemical mass, is an optional variable that can be used at the user's discretion to generate rankings.

This section outlines the process EPA used to seek public review of the WMPT, an outline of comments received, and a summary of the changes made to the WMPT in response to the comments. EPA used WMPT rankings based on the first three of the four properties noted above as input to the development of the RCRA PBT List. The reasons for this are described in the following sections.

EPA released Beta Version 1.0 of the WMPT software [4] and the accompanying User's Guide [5] for public comment on June 23, 1997.[6] In addition to the public comments received in the docket, EPA received comments from several other sources during the public comment period, including: peer review comments obtained from technical experts in industry, environmental groups, and states during a focus group meeting in September 1997; comments from an intra-Agency technical workgroup that reviewed the WMPT as a means of identifying ''PBT'' chemicals; and comments from a WMPT pilot project conducted by EPA Region 9 in the Santa Clara Valley, California. Comments were received on many facets of the WMPT. EPA received a variety of comments, including recommendations to:

- Modify the weighting and aggregation of persistence, bioaccumulation, human toxicity, and ecological toxicity scores in the WMPT.
- Modify the WMPT to better represent actual risk, as opposed to hazard.
- Revise the data quality hierarchies for persistence and bioaccumulation data to place preference on measured data (e.g., data gathered in laboratory tests and field studies) rather than predicted data (i.e., data derived from predictive models).
- Improve the quality of data that are used as the basis for scoring by updating existing Agency data sources (e.g., the Integrated Risk Information System) and by incorporating new sources of data currently available to EPA or obtainable from non-EPA sources.
- Provide the rationale behind the ''fenceline values'' (i.e., thresholds) that separate low, medium, and high scores.
- Score metals based on bioavailability rather than environmental persistence.
- Modify the persistence scoring approach to consider partitioning to media other than water (e.g., to air).
- Modify the current low/medium/high ''binning'' approach to include more than three bins and better discriminate among chemicals in scoring.
- Provide a better indication of the uncertainty associated with chemical values and scores by providing additional information on the sources of data used in the WMPT and on the quality of the data.
- Complete a peer review of the WMPT.
- Provide a process for modifying data values and scores in the WMPT as new data become available.

An intra-Agency WMPT Workgroup was established to review the comments and provide recommendations on changes to the WMPT. With the purpose in mind of preparing chemical rankings for development of the RCRA PBT List, the Workgroup focused on addressing technical and scientific comments that would potentially affect RCRA PBT chemical scores. Comments that would not affect RCRA PBT chemical scores (e.g., comments recommending improving the user-friendliness of the Tool and User's Guide) were deferred until a later time.

EPA considered the comments and recommendations. As a result, the following changes were made to the WMPT:

- For each chemical, the higher of the human health and ecological concern scores (previously referred to as human health and ecological risk potential scores) was used to indicate overall concern for the purpose of developing the RCRA PBT List, rather than adding the two scores together.
- Measured data were given preference over predicted data in deriving persistence and bioaccumulation scores. Adjustments in data preferences were made in scoring bioaccumulation potential, (i.e., bioaccumulation factors were given preference over bioconcentration factors, and the log of the octanol-water partition coefficient was no longer used).
- New persistence, bioaccumulation, human toxicity, and ecological toxicity data (which meet our data quality standards) from a number of sources were included in the WMPT.
- The fenceline values separating low, medium, and high scores for persistence, bioaccumulation, and toxicity were better documented; in some cases, the fenceline values were recalculated.
- A multimedia partitioning model was used to estimate the partitioning of chemicals to air, water, soils, and sediments and to calculate overall environmental persistence, rather than estimating persistence in surface water alone.
- Data transparency was improved by better documenting data sources and indicating the preference levels for the underlying data used for scoring; some data that could not be sufficiently documented for the purpose of the WMPT were removed.

The comments received and EPA's responses are discussed in detail in the Waste Minimization Prioritization Tool Comment Response Document for the RCRA Waste Minimization PBT Chemical List Docket (referred to as the WMPT Comment Response Document below). This document is available in RCRA docket #F–98–MMLP–FFFFF and at EPA's Internet home page at *www.epa.gov/wastemin*.

After making the changes to the WMPT outlined above, EPA prepared spreadsheets containing revised data and scoring information. This information was used as input for developing the RCRA PBT List. As a result of the expanded and improved data used in the WMPT, approximately 2,900 chemicals receive human health or ecological concern scores, compared with approximately 1,800 chemicals in the beta version of the WMPT. Of the 2,900 chemicals, 122 chemicals score from 7 to 9 (i.e., relatively high) for human health concern and 666 score from 7 to 9 for ecological concern. Some score from 7 to 9 for both criteria. Altogether, 681 chemicals score from 7 to 9 for one or both of the two scores.

EPA has placed in the docket (#F–98–MMLP–FFFFF) a document titled Waste Minimization Prioritization Tool Spreadsheet Document for the RCRA Waste Minimization PBT Chemical List Docket (referred to below as the WMPT Spreadsheet Document) that: (1) explains changes made to the WMPT as a result of the public and peer review processes, and (2) displays spreadsheets and scoring information for 1,300 chemicals which received a score of 6 or above for human health or ecological concern. This document is also available at EPA's Internet home page at *www.epa.gov/wastemin*.

Information on the approximately 3,900 chemicals that scored from 3 to 5 or that are unscored is not included in the docket, since these chemicals did not appear to be appropriate candidates for the RCRA PBT List. Information on these chemicals will be provided in a future version of the WMPT.

[4] EPA530–C–97–003.

[5] Waste Minimization Prioritization Tool (Beta Test Version 1.0): User's Guide and System Documentation (EPA530–R–97–019).

[6] 62 FR 33868.

The WMPT Comment Response Document and WMPT Spreadsheet Document are included in today's docket to provide the reader with background information on changes made to the WMPT and its use as a foundation for the development of today's draft RCRA PBT List. The WMPT spreadsheets contained in the docket are not intended to support other applications at this time. EPA is not requesting public comment on this information, since the WMPT has already received widespread and comprehensive public review. Additional applications beyond supporting the development of today's draft RCRA PBT List will be discussed when the WMPT is re-released in 1999. That release of the WMPT revisions will include the scoring changes used in today's notice and improvements to the tool's software features.

B. How Will Ensure Stewardship of the Waste Minimization Prioritization Tool and Underlying Scientific Information?

EPA is committed to coordinating the collection of environmental data and to making it available to the public through the Agency's ''Reinventing Environmental Information Initiative.'' In 1997,[7] EPA announced three important information management reforms, which:

- Establish key data standards to improve the value of environmental information, data sharing and integration;
- Provide universal voluntary access to electronic reporting to reduce burdens and improve data quality and timeliness; and
- Implement these data standards and electronic reporting reforms in the Agency's national systems in partnership with the states through the One Stop Program.

Consistent with these principles, EPA commits to maintaining sound scientific information as a foundation for reducing RCRA PBT generation. The EPA has taken measures to practice principles of information stewardship in the development of today's draft RCRA PBT List by:

- Identifying the most up to date and documented information that is readily available;
- Excluding undocumented scientific information;
- Seeking expert advice to make assumptions, assess data quality and weigh contradictory information;
- Making information about data sources, data quality, assumptions publicly known;
- Inviting public review and comment on the data used; and
- Making appropriate adjustments to information.

The Office of Solid Waste intends to follow these principles of information stewardship to ensure the integrity of data used in the Waste Minimization Prioritization Tool. As noted above, EPA will release an updated, user-friendly version of the WMPT in 1999, and will discuss how best to maintain stewardship of this tool and the underlying data with interested organizations and individuals at that time.

III. Development of Today's Draft RCRA PBT List

The Agency followed several steps to develop today's draft RCRA Waste Minimization PBT Chemical List (referred to as the RCRA PBT List below). Each of these steps is discussed in more detail below.

A. How Were Initial Candidates for the RCRA PBT List Identified?

The first step in developing today's draft RCRA PBT List was to assemble an initial list of candidate chemicals for further examination. EPA drew from two sources to establish this initial candidate chemical list: (1) The Waste Minimization Prioritization Tool discussed above, and (2) a composite list of PBT chemicals identified as priorities by other EPA program offices. This step is discussed below, and is described in the Chemical Screening Report for the RCRA PBT List Docket (referred to below as the Screening Report), which is located in RCRA docket number F–98–MMLP–FFFFF.

1. Candidates From the Waste Minimization Prioritization Tool

EPA selected as candidates from the WMPT those chemicals which scored 7 or higher (on a scale of 3–9) for either human health concern or ecological concern. A total of 681 chemicals scored in the WMPT met this criterion. EPA then grouped certain polycyclic aromatic hydrocarbons into a single polycyclic aromatic hydrocarbons category, and grouped individually listed polychlorinated biphenyls with the existing polychlorinated biphenyls category, resulting in a total of 660 candidate chemicals and chemical groups.

EPA selected the cut-off score of 7 for human health or ecological concern in order to ensure that chemical candidates represent at least moderately high concern for PBT. In order to attain a score of 7, a chemical must receive the highest WMPT score for at least two of the three factors (P, B and T) or the highest score for one factor and moderate scores for the other two factors. EPA believes that a higher cut-off score would be overly restrictive, eliminating from further consideration many chemicals of significant RCRA PBT concern, while a lower cut-off score would be unnecessarily expansive, drawing in many chemicals which would not represent a sufficiently high level of RCRA PBT concern for this national PBT waste minimization effort.

2. PBT Priorities Identified by Other EPA Programs

In addition to drawing candidate chemicals from the WMPT, EPA considered PBT chemical priorities identified by other EPA programs through internal PBT coordination efforts. This list of 34 chemicals included 18 chemicals which scored below 7 for human health or ecological concern in the WMPT, and 16 chemicals that were either not included in the WMPT, or were included, but were not scored because there were insufficient data. These chemicals were included in the candidate pool for development of the RCRA PBT List to determine the extent to which they may also be a RCRA PBT waste minimization candidate. Including these 34 chemicals in the candidate pool brought the total number of candidate chemicals and chemical groups to 694.

B. What Inclusion/Elimination Criteria Were First Applied to the Candidate Chemicals?

After assembling the initial candidate chemical list, EPA eliminated chemicals that would not be good candidates for RCRA waste minimization efforts because they are unlikely to be present in RCRA hazardous waste in significant quantities, or are present, but are not highly toxic. Three criteria were used to screen out these chemicals: pesticides which are banned from production and use; chemicals with zero reported quantities in waste; and chemicals with low WMPT toxicity scores. This step is summarized below, and is described in detail in the Screening Report.

1. Banned Pesticides

EPA first eliminated those chemicals that are pesticides banned from use in the United States and are not known to have other, non-pesticidal sources or uses. This screen eliminated 28 chemicals from further consideration, including a number of well-known PBT chemical priorities such as DDT. EPA

[7] Administrator Carol Browner and Deputy Administrator Fred Hansen. EPA Common Sense Initiative Meeting. July 21, 1997.

did not eliminate from further consideration pesticides that are ''severely restricted,'' but not banned in the U.S.

2. Chemicals Not Present in RCRA Wastes

EPA also eliminated from further consideration chemicals that are not likely to be found in RCRA hazardous waste, based on quantities reported in the Agency's Toxics Release Inventory (TRI) database [8] and the National Hazardous Waste Constituent Survey (NHWCS).[9] Chemical quantities reported in the TRI were adjusted to estimate quantities present in hazardous waste streams by: including only TRI reporters who had RCRA ID numbers; in the case of underground injected wastes, including only TRI reporters with RCRA ID numbers who also had RCRA UIC (Underground Injection [well] Code) ID numbers; and excluding air and water releases from TRI production-related wastes. This screen eliminated 510 candidate chemicals, leaving 156 chemicals to be considered further in developing the RCRA waste minimization list. Some highly PBT chemicals were eliminated in this step (e.g., dioxin) because they are generated in very small quantities, which are not reported in the TRI. These were flagged and re-examined in the last step, described below in Section E.

3. Chemicals With Low Toxicity

Finally, EPA checked to ensure that none of the 156 chemicals passing the above screens became a candidate based on high P and/or B scores, but had a low score for human health or ecological toxicity. The rationale for this screen was that, even though some chemicals may persist or bioaccumulate in the environment, they should not be a candidate for the national RCRA PBT List if the chemical is not likely to be at least moderately toxic in the environment. None of the 156 candidate chemicals had low toxicity scores.

C. How Were the Remaining Candidate Chemicals Ranked?

To identify the best candidate chemicals for RCRA source reduction and recycling efforts, EPA developed four ''primary'' criteria for ranking the remaining chemicals. These criteria included: (1) Each chemical's PBT score from the WMPT; (2) chemical quantity and prevalence (or frequency of occurrence) in hazardous waste; (3) evidence that the chemical is present in the environment, particularly at levels of concern; and (4) the degree to which the chemical is a concern to the RCRA program.

Ranking the candidate chemicals was completed by: Summing subcriteria scores within each of the four primary criteria discussed above; converting the scores for each primary criterion to a 25 point scale (i.e., the Agency gave equal weight to the four primary criteria); summing scores for each chemical; and arranging the chemicals in rank order on a scale of 1–100. The individual subcriteria were scored on a 0, 1, 2, 3 scale (except where noted). The values on this scale were assigned to different ranges of data values by examining the underlying data distributions and using natural breaks in the distributions or creating comparably sized groups. The process used to score and rank chemicals in this step is summarized below and is described in detail in the Chemical Ranking Report for the RCRA PBT List Docket (referred to below as the Ranking Report), located in RCRA docket number F–98–MMLP–FFFFF.

1. PBT Scores

In this step, each candidate chemical was scored based on the higher of its WMPT human or ecological concern scores. The scoring approach is provided in Table 1 below. Each chemical with a WMPT score was assigned a subcriterion score from 0–3. Chemicals not scored in the WMPT were ranked by summing and normalizing scores for the remaining three primary criteria, to compensate for the missing WMPT score.

TABLE 1.—PBT CHARACTERISTICS SCORING

PBT characteristics subcriterion	Subcriterion score
Higher of WMPT human health and ecological concern scores equals 9	3
Higher of WMPT human health and ecological concern scores equals 8	2
Higher of WMPT human health and ecological concern scores equals 7	1
WMPT human health and ecological concern scores are both less than 7	0

2. Quantity and Prevalence

The Agency believes that RCRA PBT chemicals which occur in greater quantities, or are more prevalent, in hazardous waste should be given a higher national priority for RCRA waste minimization than other PBT chemicals. Therefore, EPA assigned higher scores to chemicals with greater quantity, or prevalence, in hazardous waste.

EPA used TRI and NHWCS data to determine chemical quantities in waste and used Biennial Reporting System (BRS) data [10] to determine waste stream quantities associated with each chemical. EPA also used TRI, NHWCS, and BRS data to determine the number of facilities generating or managing each chemical in hazardous waste.

TRI quantity and prevalence data were adjusted to identify and estimate chemical quantities and prevalence in RCRA hazardous waste by: (1) Including only TRI reporters who had RCRA ID numbers; (2) in the case of underground injected wastes, including only TRI reporters with RCRA ID numbers who also had RCRA UIC ID numbers; and (3) excluding air and water releases from TRI production-related waste. NHWCS quantity and prevalence data were used only where TRI quantity and prevalence data were unavailable. To estimate the quantities of BRS waste streams and number of generators associated with particular chemicals, EPA used the RCRA Chemical-Waste Code Crosswalk,[11] which identifies hazardous waste codes that may be associated with particular chemicals.

The TRI reports quantity information on both metals and metal compounds. The quantity information reported for a metal compound only includes the metal component of the compound. In keeping with this approach for metal reporting, EPA added together the quantities reported in TRI as metals and metal compounds.

The TRI/NHWCS score and the BRS score were weighted equally (i.e., were added together and divided by two) in deriving both the quantity and prevalence subcriteria scores. If the BRS score was missing for a chemical, the TRI/NHWCS score was used as the quantity or prevalence subscriterion score. The quantity subcriterion score was added to the prevalence subcriterion score in deriving the

[8] U.S. EPA. 1997. 1991 and 1995 Toxic Release Inventory (TRI) Data.

[9] U.S. EPA. 1998. National Hazardous Waste Constituent Survey. Office of Solid Waste. Washington, DC. This is a survey of chemical constituent presence in hazardous waste streams managed by RCRA treatment, storage and disposal facilities.

[10] U.S. EPA. 1997. Biennial Reporting System Flat Files. Office of Solid Waste and Emergency Response, Washington, DC.

[11] The RCRA Chemical-Waste Code Crosswalk (EPA530–D–97–005) is from the beta version of the WMPT; it is included in RCRA Docket #F–98–MMLP–FFFFF. Chemicals not listed in the crosswalk were not evaluated on the BRS-based criteria.

quantity/prevalence criterion score for each chemical. The scoring for quantity and prevalence is presented in Table 2 below.

TABLE 2.—QUANTITY AND PREVALENCE SCORING

Quantity/prevalence subcriterion	Value range	Subcriterion score
TRI chemical quantity (pounds/yr)	Greater than 10,000,000	3
	1,000,000–10,000,000	2
	1–1,000,000	1
	Less than 1	0
NHWCS chemical quantity (pounds/yr)	Greater than 1,000,000	3
	100,000–1,000,000	2
	1–100,000	1
	Less than 1	0
BRS waste stream quantity (tons/yr)	Greater than 100,000,000	3
	10,000,000–100,000,000	2
	1–10,000,000	1
	Less than 1	0
TRI number of generators	More than 99	3
	10–99	2
	1–9	1
	0	0
NHWCS number of handlers [12]	More than 10	3
	5–10	2
	1–4	1
	0	0
BRS number of generators	More than 9,999	3
	1,000–9,999	2
	1–999	1
	0	0

3. Environmental Presence[12]

The Agency believes that PBT chemicals which are detected in the environment more frequently than other chemicals should be given higher priority for reduction through source reduction and recycling. EPA ranked each chemical's ''presence in the environment'' using measurement indicators contained in the following three national databases: (1) EPA's Fish Advisory Database [13] (EPA used the most current year of fish advisory data in the U.S.—1997); (2) EPA's National Sediment Inventory [14] (EPA used data on sediment contamination in the U.S. for all years contained in the database; and (3) the Agency for Toxic Substances and Disease Registry's Hazdat Database [15] (EPA used data on chemicals found in the toxic cleanup sites identified on the EPA's Superfund National Priority List (NPL) covered under the Comprehensive Environmental Response, Compensation and Liability Act.

Scores were developed using the scoring approach in Table 3 below. Each environmental presence subcriterion was scored from 0–3. The scores for the three subcriteria were weighted equally (in this case being added together) in deriving an environmental presence criterion score for each PBT chemical.

TABLE 3.—ENVIRONMENTAL PRESENCE SCORING

Environmental presence subcriterion	Value range	Subcriterion score
Fish Advisory Database (1997 data)	More than 99 advisories	3
	10–99 advisories	2
	1–9 advisories	1
	No advisories	0
National Sediment Inventory (1980–1993)	More than 999 detections	3
	100–999 detections	2
	1–99 detections	1
	No detections	0
ATSDR HazDat Database (all NPL sites)	More than 499 sites	3
	100–499 sites	2
	1–99 sites	1
	No sites	0

[12] The number of handlers is the number of RCRA treatment, storage, or disposal facilities that managed a chemical, rather than the number of generators of the chemical.

[13] U.S. EPA. 1998. 1997 National Listing of Fish Consumption Advisories. Office of Water, Washington, DC. www.epa.gov/OST/fishadvice. June.

[14] U.S. EPA. 1997. The Incidence and Severity of Sediment Contamination in Surface Waters of the United States; Volume 1: The National Sediment Quality Survey. Office of Science and Technology, Washington, DC. EPA/823/R–97/006.

[15] Agency for Toxic Substances and Disease Registry. 1998. Hazardous Substance Release/Health Effects Database. website: atsdr1.atsdr.cdc.gov/8080/hazdat/html.

EPA used the ATSDR data since no comparable data were readily available from RCRA corrective action sites.

4. RCRA Programmatic Concern

EPA believes PBT chemicals that are of particular concern to the RCRA program should be given higher priority in developing today's draft RCRA PBT List than PBT chemicals identified in the WMPT or other programs that are not a particular concern to the RCRA program. To identify ''RCRA-relevant'' PBT chemicals, EPA selected the candidate PBT chemicals which are found on one or more regulatory lists used in the RCRA hazardous waste generation, management, and corrective action programs. The scoring scheme for these chemicals is provided in Table 4 below.

EPA used a wider subcriterion scoring range (0–4) for this criterion to reflect the broad range of RCRA programmatic concerns. This wider scoring range was then normalized (i.e., was converted to a 25 point scale) so that the criterion was weighted equally with the other primary criteria.

A score of 4 was assigned to PBT chemicals that: (1) Are capable of forming dense nonaqueous phase liquids (DNAPLs) that make groundwater cleanups particularly difficult; [16] (2) are identified as ''difficult to treat'' chemicals under the Land Disposal Restrictions (LDR) program; [17] or (3) are targeted for co-regulation under RCRA and the Clean Air Act Section 112 in EPA's proposed maximum achievable control technology (MACT) combustion rule for hazardous waste incinerators, cement kilns or light weight aggregate kilns, or are currently regulated under the RCRA boilers and industrial furnaces (BIF) rule (since chemicals regulated under these rules could potentially be transferred to the air or soil media after combustion).[18, 19]

Chemicals which are not on any of the regulatory lists discussed in the previous paragraph, but are on the Toxicity Characteristic (TC) list (40 CFR 261.24) or the Appendix VII list of chemicals, which is used as the basis for hazardous waste listings (40 CFR part 261), are assigned a score of 3. The Agency has historically taken regulatory actions in the RCRA program based on risk assessments and damage cases involving these chemicals.

If a chemical was not on any of the lists noted above but is regulated under RCRA based on technological standards rather than risk-based standards (i.e, chemicals covered by the Universal Treatment Standards (UTS) list (40 CFR 268.48), it was assigned a score of 2. If a chemical was not on any of the lists noted above, but was on the RCRA P list of acute hazardous waste (40 CFR 261.33), the U list of toxic waste (40 CFR 261.33), the Appendix VIII hazardous waste constituent list (40 CFR part 261), or the Appendix IX ground water monitoring list (40 CFR part 264), the chemical was assigned a score of 1. These chemicals are regulated under RCRA, but are of lesser concern. For instance, Appendix IX chemicals are used to set permit parameters. However, if they are not on the lists mentioned above, are of lesser concern. In addition, although P list chemicals are of concern due to their acute hazards, they are generated infrequently and usually in small quantities.

Chemicals not found on any of the lists discussed above received a 0 score. The scoring of subcriteria for RCRA Programmatic Concern is summarized in Table 4 below.

TABLE 4.—RCRA PROGRAMMATIC CONCERN SCORING

RCRA programmatic concern subcriterion	Subcriterion score
Chemicals contained on any of the following lists: (1) Chemicals that can form dense non-aqueous phase liquids; (2) chemicals identified as ''difficult to treat,'' or (3) chemicals regulated under the MACT rule for hazardous waste incinerators, cement kilns and light weight aggregate kilns, or the RCRA rule for boilers and industrial furnaces	4
Presence on the toxicity characteristic list or the Appendix VII list of chemicals serving as the basis for hazardous waste listings	3
Presence on the land disposal restrictions universal treatment standards list	2
Presence on the RCRA P list of acute hazardous waste, the U list of toxic waste, the Appendix VIII hazardous waste constituent list, or the Appendix IX ground water monitoring list	1
Chemical not present on any of the above RCRA lists	0

[16] See the following three references:

Cohen, R.M., J.W. Mercer, and J. Matthews. 1993. DNAPL Site Evaluation. CRC Press, Boca Raton, FL.

U.S. EPA. 1993. Evaluation of the Likelihood of DNAPL Presence at NPL Sites, National Results. Office of Solid Waste and Emergency Response, Washington, DC. EPA/540/R–93/073.

U.S. EPA. 1991. Estimating Potential for Occurrence of DNAPL at Superfund Sites. Office of Solid Waste and Emergency Response, Environmental Research Laboratory, Washington, DC. EPA publication 9355–4–07FS.

[17] Eby, E. 1998. Internal communication. Waste Treatment Branch, Office of Solid Waste, U.S. EPA. May.

[18] U.S EPA. 1991. Burning of Hazardous Waste in Boilers and Industrial Furnaces: Final Rule. 56 FR 7134. February 21.

[19] U.S. EPA. 1996. Revised Standards for Hazardous Waste Combustors: Proposed Rule. 61 FR 173858. April 19.

The Agency conducted limited sensitivity testing of the ranking methodology by observing changes in the rankings in response to modifying the ranking criteria. Several scenarios were tested, including eliminating each of the primary criteria in turn and eliminating both the RCRA Relevance and Environmental Presence criteria together.

In general, the methodology appeared to be fairly robust in its identification of the top ranking chemicals. Scenarios which alternatively dropped the RCRA Relevance, Quantity/Prevalence, and the PBT Score criteria each displaced roughly 10 chemicals from the top 50. Elimination of the Environmental Presence criterion had less of an impact on the rankings than dropping the other criteria. This indicates that, when one of the four criteria is removed from the ranking method, the remaining criteria and data support the ranking to a substantial degree.

In a more drastic sensitivity scenario, dropping two of the criteria, RCRA Relevance and Environmental Presence, together substantially altered the rankings—30 chemicals in the top 50 were displaced, and several chemicals changed by more than 50 rank positions. These results are not surprising considering the substantial change to the scoring method (half of the criteria are removed). For further information, see the report Revised Chemical Ranking Methodology Testing Results in RCRA docket number F–98–MMLP–FFFFF.

D. What Cutoff Was Applied to the Ranked Chemicals to Obtain the Draft RCRA PBT List?

After ranking the 150 candidate chemicals, EPA selected a cutoff value to identify the ''top tier'' of chemicals for tracking on a national level. EPA narrowed the candidate list to the 61 chemicals which had a score of 50 points (the half way point on the scoring scale) as a basis for inclusion in the draft RCRA PBT List proposed today. EPA determined that a national list of 50 to 60 chemicals was appropriate, given limited Agency, State, and private resources to reduce and measure these chemicals.

E. What Final Adjustments Were Made to the Draft RCRA PBT List?

As a final step, EPA added and removed certain chemicals from the list for the particular reasons described below. Adding and removing chemicals reduced the draft RCRA PBT List from 61 to 53 chemicals.

1. U.S./Canada Binational Agreement Level 1 Chemicals

EPA added dioxins, furans, and octachlorosytrene to the RCRA PBT List because of their high priority on the ''Level 1'' list of the U.S./Canada Binational Agreement.[20] Four other Level 1 chemicals were already among the top tier chemicals for the RCRA PBT List.[21] Nine chemicals on the Level 1 list, including eight banned pesticides and alkyl lead, are excluded because they are either no longer produced (e.g., banned pesticides), or are found in very limited quantities in wastes from only a few production processes (e.g., alkyl lead).[22] In either case, these chemicals are not very amenable to reductions through waste minimization. The Binational Agreement and the Level 1 list are available for review in RCRA docket number F–98–MMLP–FFFFF.

2. Chemicals With Low or no PBT Scores

The Agency initially added chemicals identified by other EPA programs to the candidate list to provide a comprehensive starting point in the RCRA PBT List development process. At this final step in the RCRA PBT List development process, six chemicals were removed for the following reasons. Five of the chemicals—tetrachlorethylene, trichlorethylene, methylene chloride, 1,2-dichloroethane, and 1,1,2,2-tetrachloroethane—were removed because their WMPT PBT scores are below 7. Although individual States may wish to pursue reductions in these chemicals, EPA determined they are not among the most highly toxic for a national list. The sixth, silver, was removed because it has no PBT score.

3. PCBs

The Agency removed the PCB chemical group from the RCRA PBT List because production of PCBs is banned in the U.S. and waste minimization opportunities for PCBs in process waste streams are believed to be very limited.

4. Di-n-octyl Phthalate and Butyl Benzyl Phthalate

The Agency previously removed both of these chemicals from the EPCRA Section 313 List of Toxic Chemicals in response to delisting petitions. Consequently, the Agency examined these chemicals more closely to determine whether to continue to include them on the draft RCRA PBT List. The Agency decided to remove di-n-octyl phthalate from the draft RCRA PBT List because data developed in response to that delisting petition indicated that the human and ecological toxicity data were not conclusive. However, EPA has retained butyl benzyl phthalate on the draft RCRA PBT List because the ecological toxicity criteria considered for delisting from the EPCRA list were different than the criteria used in the WMPT for determining high levels of concern for ecological toxicity.

5. Hexachlorocyclohexane Isomers

The Agency removed the alpha, beta, and delta hexachlorocyclohexane isomers and retained the gamma isomer. The gamma isomer is believed to be the predominant PBT isomer in waste streams, and achieving waste minimization for this isomer would result in reductions in the other isomers as well.

IV. EPA's Draft RCRA Waste Minimization PBT Chemical List and Issues for Public Comment

A. Which Chemicals Are Included on the Draft RCRA PBT List?

Table 5 below presents EPA's draft RCRA PBT List. The chemicals are listed in alphabetical order. No rank ordering is intended in this List, and, in fact, the List treats these chemicals as equal environmental priorities. The Chemical Abstract Service Registry Number (CASRN) is also shown, where available.

TABLE 5.—DRAFT RCRA PBT LIST

	CASRN
Dioxins and Furans:	

[20] U.S. EPA. 1997. Great Lakes Binational Toxics Strategy. Great Lakes National Program Office, Chicago, IL. www.epa.gov/grtlakes/p2/bnsintro.html

[21] These four chemicals include hexachlorobenzene, mercury and compounds, PCBs, and benzo(a)pyrene. PCBs were subsequently removed from the proposed RCRA PBT List (see discussion below), and benzo(a)pyrene was included in the category polycyclic aromatic hydrocarbons.

[22] The eight banned pesticides include aldrin, dieldrin, chlordane, DDT, DDD, DDE, toxaphene, and mirex.

TABLE 5.—DRAFT RCRA PBT LIST—Continued

	CASRN
Dioxins (PCDD)	.....
Furans (PCDF)	.....
Chlorinated Solvents:	
Chloroform	67–66–3
1,1-Dichloroethane	75–34–3
1,1,1-Trichloroethane	71–55–6
Chlorobenzenes:	
1,2-Dichlorobenzene	95–50–1
1,3-Dichlorobenzene	541–73–1
1,4-Dichlorobenzene	106–46–7
1,2,4-Trichlorobenzene	120–82–1
1,2,4,5-Tetrachlorobenzene	95–94–3
Pentachlorobenzene	608–93–5
Hexachlorobenzene	118–74–1
Other Halogenated Organics:	
4-Bromophenyl phenyl ether	101–55–3
Hexachlorobutadiene	87–68–3
Octachlorostyrene	29082–74–4
Pesticides	
alpha-Endosulfan	959–98–8
beta-Endosulfan	33213–65–9
Heptachlor	76–44–8
Heptachlor epoxide	1024–57–3
gamma-Hexachlorocyclohexane	58–89–9
Methoxychlor	72–43–5
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
2,4,5-Trichlorophenol	95–95–4
Organonitrogens:	
Nitrobenzene	98–95–3
Nonhalogenated Phenolics:	
Phenol	108–95–2
2,4,6-tris-(1,1-Dimethylethyl)phenol	732–26–3
Phthalate esters:	
Bis-(2-ethylhexyl) phthalate	117–81–7
Butylbenzyl phthalate	85–68–7
Dibutyl phthalate	84–74–2
Polycyclic aromatic hydrocarbons**:	
Acenaphthene	83–32–9
Acenapthylene	208–96–8
Anthracene	120–12–7
Benzo(g,h,l)perylene	191–24–2
Fluoranthene	206–44–0
Fluorene	86–73–7
2-Methylnaphthalene	91–57–6
Naphthalene	91–20–3
PAH group (as defined in TRI).	
Phenanthrene	85–01–8
Pyrene	129–00–0
Metals	
Antimony	7440–36–0
Arsenic	7440–38–2
Beryllium	7440–41–7
Cadmium	7440–43–9
Chromium	7440–47–3
Copper	7440–50–8
Lead	7439–92–1
Mercury	7439–97–6
Nickel	7440–02–0
Selenium	7782–49–2
Zinc	7440–66–6
Cyanide	57–12–5

** The Toxics Release Inventory reports some polycyclic aromatic hydrocarbons (PAHs) as a group, and reports other PAHs individually. The 10 individual PAHs listed in this table are not included in the TRI PAH group. See the *Screening Report* for a list of PAHs included in the TRI PAH group.

B. What Issues is EPA Requesting Public Comment On?

The Agency welcomes public comment on any aspect of the methodology used to develop the draft RCRA PBT List, including the data sources, ranking criteria and scoring schemes, the cutoff criteria, and the final adjustments to the List. The Agency also requests comment on the specific issues listed below. The Agency is not requesting comment on the data or methodology used to develop the WMPT, or the scoring results of the WMPT. The WMPT went through a thorough, comprehensive and constructive public review and comment process. EPA has incorporated its response to those comments in the underpinnings of today's notice and therefore does not believe comments regarding the WMPT are generally pertinent to this effort.

Specific issues for comment include:

1. Banned Chemicals

Is it appropriate to eliminate chemicals from consideration for the draft RCRA PBT List because they are no longer used in production or generated in hazardous waste, or are generated in very limited quantities from very few production processes, and therefore are not good candidates for future reductions through waste minimization? Is it appropriate to eliminate banned pesticides, PCBs, and alkyl lead for this reason, as the Agency has done in developing the List?

2. Waste Minimization Feasibility

Should the agency eliminate from consideration PBT chemicals contained in hazardous waste for which there are few feasible waste minimization options available, or should the agency consider these as an incentive to encourage research and development of waste minimization methods for these chemicals?

3. ''Non-measurable'' Chemicals

The draft RCRA PBT List includes 16 chemicals that were reported in the National Hazardous Waste Constituent Survey but are not reported in the Toxics Release Inventory, and therefore, cannot be easily tracked over time. Is it appropriate to include on the List chemicals for that TRI data, or other annual chemical-specific data, are not readily available for tracking national chemical reduction progress? Are there other reliable national sources of chemical reporting data that could be used to track generation and reductions of these chemicals?

4. Chemicals With Very High P, B, and/or T Values

Should chemicals with very high data values for persistence, bioaccumulation potential, human toxicity, and/or ecological toxicity (e.g., with values at the top end of the data distributions) be considered for addition to the RCRA PBT List, even though TRI data are not available for tracking progress? How would progress be measured for these chemicals?

5. Chemicals With Low Reported Quantities

Several chemicals on the RCRA PBT List are estimated in the National Hazardous Waste Constituent Survey to be generated in quantities of less than 100 pounds per year. The Agency did not use a specific quantity cutoff in developing the RCRA PBT List. Should a quantity cutoff be used? If so, what is the appropriate value for the cutoff? Should different cutoffs be used for chemicals which are the most toxic compared to others which are less toxic? If so, what should those cutoffs be?

6. Priorities Identified by Other Organizations.

Should EPA add to the RCRA PBT List State or other organization's priority chemicals which do not already appear on the List? Among these chemicals, should those with low or no PBT scores (e.g., waste solvents), or those with low or no chemical quantities (e.g., some Level 1 U.S./Canada Binational Agreement chemicals) be included? A list of chemical priorities identified by several States is located in RCRA docket number F–98–MMLP–FFFFF.

7. Including Recycled Wastes in Determining Quantities of RCRA-Relevant Waste Associated with Chemicals

In considering the quantity and prevalence of candidates for the RCRA PBT List (step C.4 above), the Agency included quantities that were recycled in its scoring procedure. Should recycled quantities be included when determining the quantities of chemicals associated with hazardous wastes in developing the RCRA PBT List, or should EPA measure chemicals only at the point of generation?

Dated: October 30, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–29952 Filed 11–6–98; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 12, 1998, 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

—October 8, 1998 (Open and Closed)

B. New Business

1. Regulation

—Balloting and Stockholder Reconsideration Issues (Final) [12 CFR Part 611]

2. Other

—Statement on Regulatory Burden (Notice of Intent; Comment Period Extension)

Closed Session*

C. Report

—OSMO Report

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Date: November 5, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–30102 Filed 11–5–98; 1:18 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

TE & TIME: *Thursday, November 12, 1998 at 10:00 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1998–22: Leo Smith.

Advisory Opinion 1998–23: Status of Maine Green Party as State Committee.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer; telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–30064 Filed 11–5–98; 12:00 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Project Impact: Building Disaster Resistant Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Funds and Grant Availability.

SUMMARY: FEMA gives notice of the availability of $30 million of appropriated grant funds to Project Impact communities and States with Project Impact communities.

DATES: Grant funds are available as of November 9, 1998.

ADDRESSES: Approved communities and States with approved Project Impact communities that have not already received grant application materials should contact: Sylvia Carroll, Federal Emergency Management Agency, 500 C Street, SW., room 350, Washington, DC 20472, 202–646–3503 or (email) sylvia.carroll@fema.gov.

FOR FURTHER INFORMATION CONTACT: Carol Transou, Federal Emergency Management Agency, 500 C Street, SW., room 402, Washington, DC 20472, (202) 646–3701, (telefax)(202) 646–3231, or (email) carol.transou@fema.gov.

SUPPLEMENTARY INFORMATION: Under Public Law 105–65, 111 Stat. 1376, Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, 1998, we are issuing today a Request for Applications (RFA) to implement a $30 million grant program that is limited to Project Impact communities and to States with Project Impact communities.

Community Grants

The community grant is available to designated Project Impact communities to facilitate the development and implementation of a comprehensive, long-term mitigation strategy through collaboration with private sector and non-profit organizations, and with local, State and Federal government partners. Within this framework, the community grant is to fund prevention projects that result in long-term reductions in property damage as well as contribute to the sustainability of the partnership.

State Grants

The State grant is available to States with a Project Impact community through the FEMA Performance Partnership Agreement/Cooperative Agreement process for activities that directly support Project Impact communities.

Who Is Eligible for Grants?

The community which a State has designated, with FEMA concurrence, as a Project Impact community is eligible for a community grant. Each State with a Project Impact community is eligible for a state grant.

What Are Mitigation Measures?

Mitigation measures generally are those projects and actions that reduce the potential losses to life and property from natural hazard events in a permanent or long-term manner. Communities shall categorize mitigation projects as: mitigation for existing structures; or mitigation of existing utility facilities or systems that are publicly owned and operated on a non-profit basis. Communities shall categorize measures to support mitigation goals as: (1) Adoption of policies or practices for mitigation in existing structures, new development, or redevelopment; (2) Activities that help build or sustain public/private partnerships; (3) Hazard identification and risk assessment; (4) Hazard mitigation planning and development of codes and standards; and (5) Personnel support.

What Is the Process for Applying?

For designated community assistance, communities must submit a grant application package to FEMA. FEMA regions will work with the communities to complete this application package. The community shall submit the application to the FEMA Regional Director by November 6, 1998. The Regional Director or his/her designee can grant an extension of up to 90 days upon receipt of a written justification/request from the community.

For State funding assistance, the State with a Project Impact community must submit a letter or memorandum to the Regional Director indicating its desire for funds to support the Project Impact community and its agreement to convene State-wide support for comprehensive mitigation.

What Criteria Will FEMA Apply to Grant Applications?

For a designated community, we will review and negotiate with the local jurisdiction to determine whether the proposed activities would: (1) reduce the likelihood of future disaster costs under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and (2) help sustain the community's momentum in broad-based mitigation efforts. Activities the community may pursue are described in the previous section entitled ''What are Mitigation Measures.''

A State with a Project Impact community must agree to use the funds in direct support of the Project Impact community and to convene statewide support for comprehensive hazard mitigation. For example, a State may use the FEMA funding to support Project Impact communities:

- To fund State activities in direct support of Project Impact communities such as costs associated with logistics and meetings, staff support, and travel costs to meetings with the community or to FEMA Project Impact meetings;
- To fund training costs, including to train State officials supporting Project Impact and to develop training packages for State and local officials;
- To provide mini-grants to Project Impact communities to augment or expedite Project Impact activities;
- To fund travel of local community officials to other communities, State meetings or national conferences at State request to share Project Impact information;
- To fund State costs in information development and dissemination to support Project Impact;
- To fund expert, short-term technical assistance support to Project Impact communities.

Dated: October 29, 1998.

Michael J. Armstrong,

Associate Director, Mitigation Directorate.

[FR Doc. 98–29980 Filed 11–6–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–19]

Saeid B. Maralan (aka Sam Bustani), World Line Shipping, Inc. d/b/a World Line Shipping and World Line Shipping International Shipping Co. and Atlas World Line, Inc. d/b/a Atlas World Line and Atlas World Line International Shipping Co.—Possible Violations of Sections 8(a)(1), 10(b)(1), 19(a) and 23(a) of the Shipping Act of 1984; Order of Investigation and Hearing

World Line Shipping, Inc., also doing business as World Line Shipping and World Line Shipping International Shipping Co., is a tariffed and bonded non-vessel-operating common carrier (''NVOCC''), and holds itself out as an NVOCC pursuant to its ATFI tariff FMC No. 015099–001, effective November 20, 1997. World Line Shipping, Inc. currently maintains an NVOCC bond, No. 8941513, in the amount of $50,000 with Washington International Insurance Company. World Line Shipping, Inc. was incorporated in Delaware on September 12, 1997 and in California on April 29, 1998. Saeid B. Maralan (aka Sam Bustani) (''Bustani'') is the President and sole stock owner of World Line Shipping, Inc. Although Bustani uses World Line Shipping and World Line Shipping International Shipping Co. as d/b/a's, the tariff for World Line Shipping, Inc. does not list any of these company names.

Atlas World Line, Inc., also doing business as Atlas World Line and Atlas World Line International Shipping Co., is a non-tariffed and non-bonded NVOCC located at 14415 S. Main Street, Gardena, CA 90248. Atlas World Line, Inc. was incorporated in Delaware on August 29, 1996 and in California on January 6, 1997. It appears that the Delaware corporation is no longer an active entity, but the California corporation remains active. Bustani is the President and sole stock holder of Atlas World Line, Inc.

It appears that from at least March 30, 1997 until April 21, 1998, Bustani has provided ocean transportation services to the public for shipments from the United States to foreign countries, consisting mostly of household goods, personal effects and automobiles. Bustani, using numerous company names, appears to dispatch shipments via ocean common carriers, arrange for the transportation of shipments on behalf of shippers, and prepare documentation consisting of bills of lading and export documents. Shippers appear to look to Bustani and his companies for the delivery of shipments. Therefore, it appears Bustani and his companies hold themselves out to perform transportation to the public and accept responsibility for the transportation of shipments. Shipments are contracted with ocean common carriers under the names of actual shippers as well as under the names of Atlas World Line, Inc., Atlas World Line, Atlas World Line International Shipping Company, World Line Shipping, Inc., World Line Shipping and World Line Shipping International Shipping Company.

Section 8(a) of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1707(a), provides that each common carrier must file a tariff with the Commission showing all of its rates, charges, classifications, rules and practices. Section 3(6) of the 1984 Act, 46 U.S.C. app. 1702(6), in pertinent part, defines a common carrier as a person holding out to the public to provide transportation by water between the United States and a foreign country, that assumes responsibility for performing the transportation and utilizes a vessel operating on the high seas for providing the transportation. Section 3(17) of the 1984 Act, 46 U.S.C. 1702(17), defines a non-vessel-operating common carrier (''NVOCC'') as a common carrier that does not operate the vessels used in providing the ocean transportation and acts as the shipper in relation with the ocean common carrier. Section 23(a) of the 1984 Act, 46 U.S.C. app. 1721(a), further provides that each NVOCC must furnish to the Commission a bond, proof of insurance or other surety, *inter alia*, to insure the financial responsibility of the carrier to pay any judgment for damages arising from its transportation-related activities. According to the records maintained by the Commission's Bureau of Tariffs, Certification and Licensing, no tariff or bond has been filed with the Commission in the name of Saeid Maralan, or his alias Sam Bustani, Atlas World Line, Inc., Atlas World Line or Atlas World Line International Shipping Company. Therefore, it appears that Bustani, by providing ocean transportation of cargo to the public for shipments between the United States and foreign countries and by contracting as a shipper for the carriage of the cargo, has acted as a NVOCC without a tariff or bond on file with the Commission, in violation of sections 8(a) and 23(a) of the 1984 Act.

Section 10(b)(1) of the 1984 Act, 46 U.S.C. app. 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property that the rates set forth in its tariff. It appears that World Line Shipping, Inc. failed to file a commodity rate for numerous shipments, and in other instances did not charge the rates set forth in its tariff.

Section 19(a) of the 1984 Act, 46 U.S.C. app. 1718(a), provides that no person may act as an ocean freight forwarder unless that person has obtained a license from the Commission. Section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), defines an ocean freight forwarder as a person in the United States that dispatches shipments from the United States to a foreign country via common carriers, books or otherwise arranges space for such shipments on behalf of shippers, and processes the documentation or performs related activities incident to those shipments. In order to obtain an ocean freight forwarder license, a forwarder must furnish to the Commission a bond to insure the financial responsibility of the forwarder, and the Commission must determine that the forwarder is qualified by experience and character to render forwarding services. According to a review of records maintained by the Commission's Bureau of Tariffs, Certification and Licensing, no ocean freight forwarder license has been issued in the name of Saeid Maralan or his alias name, Sam Bustani. Therefore, it would appear that Bustani, by dispatching shipments, by booking or otherwise arranging space for the shipments, and by processing documentation incident to ocean shipments made on behalf of others from the United States, has acted as an ocean freight forwarder without a license issued by the Commission in violation of section 19(a) of the 1984 Act.

Section 13 of the 1984 Act, 46 U.S.C. app. 1712, provides that a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations.[1] Section 13 further provides that a common carrier's tariff may be suspended for violations of section 10(b)(1) for a period not to exceed one year.

Now therefore, it is ordered, That pursuant to sections 8, 10, 11, 13, 19 and 23 of the 1984 Act, 46 U.S.C. app. 1707, 1709, 1710, 1718 and 1721, an investigation is instituted to determine whether Saeid B. Maralan (aka Sam Bustani), World Line Shipping, Inc. d/b/a/ World Line Shipping and World

[1] The maximum penalties are raised by 10 percent for violations occurring after November 7, 1996. See Inflation Adjustment of Civil Monetary Penalties, 27 S.R.R. 809 (1996).

Line Shipping International Shipping Co. and Atlas World Line, Inc. d/b/a Atlas World Line and Atlas World Line International Shipping Co.:

(1) Violated sections 8(a) and 23(a) of the 1984 Act by acting as a NVOCC without a tariff and bond on file with the Commission;

(2) Violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges showing in World Line Shipping, Inc.'s NVOCC tariff;

(3) Violated section 19(a) of the 1984 Act by acting as an ocean freight forwarder without a license issued by the Commission;

(4) Whether in the event violations of sections 8(a), 10(b)(1), 19(a) or 23(a) of the 1984 Act are found, civil penalties should be assessed against respondents, and if so, the amount of penalties to be assessed;

(5) Whether, in the event violations of section 10(b)(1) are found, the tariff of World Line Shipping, Inc. should be suspended; and

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, that Saeid B. Maralan (aka Sam Bustani), World Line Shipping, Inc. d/b/a World Line Shipping and World Line Shipping International Shipping Co. and Atlas World Line, Inc. d/b/a Atlas World Line and Atlas World Line International Shipping Co. are designated as Respondents in this proceeding;

It is further ordered, that the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72;

It is further ordered, that all further notices, orders and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's rules of practice and procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, that in accordance with Rule 61 of the Commission's rules of practice and procedures, the initial decision of the Administrative Law Judge shall be issued by November 2, 1999 and the final decision of the Commission shall be issued by March 2, 2000.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–29739 Filed 11–6–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-28023) published on pages 56033 and 56034 of the issue for Tuesday, October 20, 1998.

Under the Federal Reserve Bank of Cleveland heading, the entry for First Merit Corporation, Akron, Ohio, is revised to read as follows:

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. FirstMerit Corporation, Akron, Ohio; to acquire 100 percent of the voting shares of Signal Corp., Wooster, Ohio, and thereby indirectly acquire Signal Bank, N.A., Wooster, Ohio; Summit Bank, N.A., Akron, Ohio, and NC Interim National Bank, Wooster, Ohio (in formation, successor to First Federal Savings Bank, New Castle, Pennsylvania).

In connection with this application, Applicant also has applied to acquire First Federal Savings Bank of New Castle, New Castle, Pennsylvania, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y; Mobile Consultants, Inc., Alliance, Ohio, and thereby engage in brokering manufactured home loans to and on behalf of financial institutions and provides collection and recovery services on such loans, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y; and Summit Banc Investments Corp., Fairlawn, Ohio (a registered broker-dealer with NASD), and thereby engage in acting as an investment advisor, and providing securities brokerage services, pursuant to §§ 225.28(b)(6) and (b)(7) of Regulation Y.

Comments on this application must be received by November 12, 1998.

Board of Governors of the Federal Reserve System, November 3, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29893 Filed 11–6–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Sun Bancorp, Vineland, New Jersey; to acquire 100 percent of the voting shares of Sun National Bank, Delaware, Wilmington, Pennsylvania.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to merge with Ashland Bankshares, Inc., Ashland, Kentucky, and thereby indirectly acquire Bank of Ashland, Inc., Ashland, Kentucky.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Union Bankshares Corporation, Bowling Green, Virginia; to acquire 100 percent of the voting shares of The Bank of Williamsburg, Williamsburg, Virginia (in organization).

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to convert Dial National Bank, Des Moines, Iowa, which currently operates as a credit card bank, pursuant to § 4(c)(8) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, November 3, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29895 Filed 11–6–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire Mid-Penn Consumer Discount Co., Philadelphia, Pennsylvania, and thereby engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29894 Filed 11–6–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m., Thursday, November 12, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30065 Filed 11–5–98; 11:37 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 9810254]

Koninklijke Ahold NV, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or James Fishkin, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–2663.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the

full text of the consent agreement package can be obtained from the FTC Home Page (for October 20, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order, Asset Maintenance Agreement, and the Draft Complaint To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Koninklijke Ahold nv (''Ahold''), Giant Good Inc. (''Giant''), and The 1244 Corporation (''1224'') (collectively ''the proposed Respondents'') an Agreement Containing Consent Order (''the proposed consent order'') and an Asset Maintenance Agreement. The proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Ahold's proposed acquisition of all of the Class AC voting stock of Giant from 1224 and all of the Class A non-voting common stock of Giant for $43.50 per share for cash. Respondent 1224 owns all of the Class AC voting stock of Giant, which elects five of the nine directors of Giant.

II. Description of the Parties and the Proposed Acquisition

Ahold, headquartered in Zaandam, The Netherlands, is one of the world's largest supermarket firms, operating approximately 3,000 stores in Europe, North and South America, and Asia. In the United States, Ahold is the seventh largest supermarket chain. Ahold has acquired nine supermarket chains during the 1980s and 1990s: Top's, Stop & Shop, BI–LO, Giant Food Stores, Edwards, Mel's Markets, Mayfair, Red Food, and Finast. Ahold had $14.29 billion in U.S. revenues in the fiscal year that ended on December 28, 1997. The acquisition of Giant would make Ahold the fifth largest supermarket firm in the United States.

Today, Ahold operates Ahold USA, Inc., a wholly-owned subsidiary, and, through various restructurings, four wholly-owned regional supermarket firms: BI–LO, Inc., Top's Markets, Inc., Giant Food Stores, Inc. (''Giant-Carlisle''), and The Stop & Shop Companies, Inc. Ahold's supermarkets that directly compete against Giant's supermarkets are part of the Giant-Carlisle division. The Giant-Carlisle division operates supermarkets in Maryland under the ''Martin's'' trade name and in Pennsylvania under the ''Giant'' trade name.

Giant, a Delaware corporation headquartered in Landover, Maryland, is the fifteenth largest supermarket chain in the United States and one of the nation's premier regional supermarket chains. Giant operates 179 supermarkets and three free-standing drug stores in Virginia, Maryland, Delaware, New Jersey, Pennsylvania, and the District of Columbia. Giant operates supermarkets under the ''Giant'' trade name in Maryland, Virginia, and the District of Columbia, and supermarkets under the ''Super G'' trade name in Delaware, New Jersey, and Pennsylvania. Giant had $4.23 billion in total sales for the fiscal year that ended on February 28, 1998.

Ahold proposes to acquire all of the Class AC and Class AL voting stock, and all of the outstanding Class A common stock of Giant, for approximately $2.7 billion. 1224, formed in 1995 after the death of Israel Cohen, the former Chairman and CEO of Giant, owns all of the Class AC voting stock of Giant, which elects five of the nine board seats. J Sainsbury, plc, a British firm that also owns the Massachusetts-based Shaw's supermarket chain, owns the Class AL voting shares, which elects four of the nine board seats. The Class A common stock is publicly traded.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (i.e., the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units (''SKUs'')), as well as a deep inventory of those SKUs. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square foot of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores, and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood ''mom & pop'' grocery stores, convenience stores, specialty food stores (e.g., seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. These other stores operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

According to the draft compliant, the relevant sections of the country (i.e., the geographic markets) in which to analyze the acquisition are the areas in and near the following cities and towns: (a) Bel Air, Maryland; (b) Eldersburg, Maryland; (c) Frederick, Maryland; (d) Westminster, Maryland; (e) Hilltown, Pennsylvania; (f) Norristown, Pennsylvania; (g) Warminster, Pennsylvania, and (h) Yardley, Pennsylvania.

Ahold and Giant are actual and direct competitors in and near Bel Air, Eldersburg, Frederick, Westminster, Norristown, Warminster, and Yardley. Ahold is an actual potential competitor against Giant in and near the Hilltown relevant market. But for the acquisition, Ahold and Giant would become direct competitors in the Hilltown relevant market. The acquisition will eliminate that competition.

According to the draft compliant, the Bel Air, Eldersburg, Frederick, Westminster, Norristown, Warminster, and Yardley relevant markets are highly concentrated, whether measured by the Herfindahl-Hirshman Index (commonly referred to as ''HHI'') or by two-firm and four-firm concentration ratios.[1] The acquisition would substantially increase concentration in each market. Ahold and Giant would have a combined market share of near or greater than 35% in each geographic market. The post-

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

acquisition HHIs in the geographic markets range from 3,008 to 6,716.

The draft complaint further alleges that the Hilltown relevant market is also highly concentrated. The market will remain highly concentrated as a result of this acquisition, and will be significantly more concentrated than it would have been but for the acquisition.

According to the draft complaint, entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

According to the draft compliant, Ahold's proposed acquisition of the Class AC voting stock of Giant from 1224, and the Class A non-voting common stock of Giant, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating direct competition between supermarkets owned or controlled by Ahold and supermarkets owned or controlled by Giant, by eliminating actual potential competition between supermarkets owned or controlled by Ahold and supermarkets owned or controlled by Giant; by increasing the likelihood that Ahold will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarkets firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

IV. Terms of the Agreement Containing Consent Order (''the Proposed Consent Order'')

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, the proposed Respondents must divest ten specific supermarkets in the relevant markets. Four of the supermarkets that the proposed Respondents must divest are currently owned and operated by Ahold (all operating under the ''Martin's'' banner), and six of the supermarkets are currently owned and operated by Giant (of which one operates under the ''Giant'' banner and five operate under the ''Super G'' banner). The proposed Respondents must divest: (1) the Ahold ''Martin's'' in Bel Air, Maryland, to Fleming Companies, Inc. (''Fleming''), the second largest supermarket wholesaler in the United States and an operator of many company-owned supermarkets; (2) the two Ahold ''Martin's'' supermarkets in Frederick, Maryland, to Frederick County Foods LLC (''Frederick County Foods''), an independent operator affiliated with Supervalu Inc. (''Supervalu''), (3) the Ahold ''Martin's'' supermarket in Westminster, Maryland, to Richfood Holdings, Inc.'s (''Richfood'') Food-A-Rama division, a wholly-owned subsidiary that operates Richfood's ''Metro'' supermarkets based in Baltimore; (4) Giant's ''Giant'' supermarket in Eldersburg, Maryland, to Safeway Inc. (''Safeway''), the second largest supermarket chain in the United States and a major supermarket chain in Maryland; and (5) five of Giant's ''Super G'' supermarkets in Pennsylvania to Supervalu, the largest wholesaler to supermarkets and the thirteenth largest retail operator of supermarkets in the United States. These divestitures include every Ahold supermarket or every Giant supermarket in each relevant market. Each upfront buyer owns no supermarkets in the same market where it is acquiring one or more divested supermarkets from the proposed Respondents. The specific supermarkets that the proposed Respondents must divest to Fleming, Frederick County Foods, Richfood, Safeway, and Supervalu are listed below.

The supermarket that the proposed Respondents must divest to Fleming in accordance with the agreement between Ahold and Fleming dated September 12, 1998, is the following:

1. Ahold store no. 114 operating under the ''Martin's Food Market'' trade name, located at 550 West McPhail Road, Bel Air, Maryland 21014 (Harford County).

The two supermarkets that the proposed Respondents must divest to Frederick County Foods in accordance with the agreement between Ahold and Frederick County Foods dated September 11, 1998, are the following:

1. Ahold store no. 40 operating under the ''Martin's Food Market'' trade name, located at 66 Waverly Drive in the Frederick Towne Mall Shopping Center, Frederick, Maryland 21701 (Frederick County); and

2. Ahold store no. 96 operating under the ''Martin's Food Market'' trade name, located at 1305 West 7th Street in the Frederick Shopping Center, Frederick, Maryland 21701 (Frederick County).

The supermarket that the proposed Respondents must divest to Richfood in accordance with the agreement between Ahold and Richfood dated September 14, 1998, is the following:

1. Ahold store no. 36 operating under the ''Martin's Food Market'' trade name, located at 551 Jermor Lane, Westminster, Maryland 21157 (Carroll County).

The supermarket that the proposed Respondents must divest to Safeway in accordance with the agreement between Ahold and Safeway dated September 12, 1998, is the following:

1. Giant store no. 238 operating under the ''Giant'' trade name, located at 1313 Londontowne Boulevard in the Londontowne Square Shopping Center, Eldersburg, Maryland 21784 (Carroll County).

The five supermarkets that the proposed Respondents must divest to Supervalu in accordance with the agreement between Ahold and Supervalu dated September 14, 1998, are the following:

1. Giant store no. 242 operating under the ''Super G'' trade name, located at 1601 Big Oak Road in the Oxford Oaks Shopping Center, Lower Makefield Township, Pennsylvania 19067 (Bucks County);

2. Giant store no. 249 operating under the ''Super G'' trade name, located at 942 West Street Road in the Towne Square Shopping Center, Warminster, Pennsylvania 18974 (Bucks County);

3. Giant store no. 237 operating under the ''Super G'' trade name, located at 1591 Bethlehem Pike in the Hilltown Crossings Shopping Center, Hilltown Township, Pennsylvania 19440 (Montgomery County);

4. Giant store no. 243 operating under the ''Super G'' trade name, located at 2775 West Main Street in the Park-Ridge Shopping Center, Lower Providence Township, Pennsylvania 19403 (Montgomery County); and

5. Giant store no. 250 operating under the ''Super G'' trade name, located at 55 Germantown Pike in the Norriton Square Shopping Center, East Norriton Township, Pennsylvania 19401 (Montgomery County).

The proposed consent order specifically requires that the divestitures occur no later than twenty days after Ahold acquires the Class AC voting stock from 1224 or four months after the proposed Respondents signed the proposed consent order (September 18, 1998), whichever is earlier.[2] The proposed consent agreement also requires Ahold to include rescission provisions in its upfront buyer agreements that allow it to rescind the transaction(s) if the Commission, after

[2] Acceptance of the proposed consent agreement for public comment terminated the Hart-Scott-Rodino premerger waiting period and enables Ahold to acquire the Giant stock immediately.

the comment period, decides to reject any of the upfront buyers. If Ahold divests the supermarkets to be divested prior to the date the proposed consent order becomes final, and if, at the time the Commission decides to make the proposed consent order final, the Commission notifies Ahold that any of the upfront buyers is not an acceptable acquirer or that any of the upfront buyer agreements is not an acceptable manner of divestiture, then Ahold must immediately rescind the transaction in question and divest those assets within three months after the proposed consent order becomes final. At that time, Ahold must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, a trustee that the Commission may appoint has the power to divest any of the supermarkets or properties in the markets alleged in Paragraph 16 of the complaint that the proposed Respondents own to remedy the anticompetitive effects alleged in the complaint.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. When divestiture is an appropriate remedy for a supermarket merger, the Commission requires the merging parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is satisfied that the purchasers presented by the parties are well qualified to run the divested stores and that divestiture to these purchasers poses no separate competitive issues.

For a period of ten years from the date the proposed consent order becomes final, the proposed Respondents are required to provide notice to the Commission prior to acquiring supermarkets assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania. Respondents may not complete such an acquisition until they have provided information requested by the Commission. This provision does not restrict the proposed Respondents from constructing new supermarket facilities on their own; nor does it restrict the proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the proposed consent order also prohibits the proposed Respondents from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if such supermarket was formerly owned or operated by the proposed Respondents in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania. In addition, the proposed Respondents may not remove fixtures or equipment from a store or property owned or leased in Carroll, Frederick, or Harford counties in Maryland, or Bucks or Montgomery counties in Pennsylvania, that is no longer in operation as a supermarket, except (1) Prior to a sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by Ahold.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty days following the date on which they signed the proposed consent, every thirty days thereafter until the divestitures are completed, and annually for a period of ten years. The obligations of 1224 under the proposed consent order will terminate upon consummation of the proposed acquisition.

V. Terms of the Asset Maintenance Agreement

The proposed Respondents also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Ahold acquires the Class AC voting stock of Giant from 1224 until the divestitures have been completed, the proposed Respondents must maintain the viability, competitiveness and marketability of the assets to be divested, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability. The Asset Maintenance Agreement specifies these obligations in detail. The obligations of 1224 under the Asset Maintenance Agreement will terminate upon consummation of the proposed acquisition.

VI. Opportunity for Public Comment

The proposed consent order has been placed on the public record for sixty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Fleming, Frederick County Foods, Richfood, Safeway, and Supervalu, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order or the Asset Maintenance Agreement, nor is it intended to modify the terms of the proposed consent order or Asset Maintenance Agreement in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–29846 Filed 11–6–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Publication of Exposure Drafts

SUMMARY: The Federal Accounting Standards Advisory Board (FASAB) announces the publication of the following three Exposure Drafts of proposed Statements of Federal Financial Accounting Standards and solicits comments on them:

- *Standards For Management's Discussion and Analysis,* October 1, 1998. Written comments to the Board are requested by January 4, 1999. The Office of Management and Budget expects to use these concepts and standards for MD&A in revising its guidance on the ''Overview'' section of financial reports.
- *Concepts For Management's Discussion and Analysis,* October 1, 1998. Written comments to the Board are requested by January 4, 1999. The Office of Management and Budget expects to use these concepts and standards for MD&A in revising its

guidance on the ''Overview'' section of financial reports.

• *Recognition Of Contingent Liabilities Arising From Litigation: An Amendment of SFFAS 5, Accounting For Liabilities Of The Federal Government.* Written comments to the Board are requested by November 30, 1998. This Exposure Draft contains proposed standards that address accounting for loss contingencies involving specific cases of pending or potential litigation.

Interested parties are encouraged to comment on any issues related to these three documents. The text of the documents can be viewed through the electronic Financenet on the FASAB Home Page www.financenet.gov/fasab.htm. Hard copies may be obtained from FASAB, 441 G St., NW, Suite 3B18, Washington, DC 20548. Telephone: 202–512–7350.

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. 92–463, sec. 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: November 4, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–29946 Filed 11–6–98; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ryan White Care Act Requirement—Secretary's Determination on HIV Testing of Newborns

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and request for comments.

SUMMARY: Section 2626 of P.L. 104–146 (42 U.S.C. 300ff–34), the ''Ryan White CARE Act Amendments of 1996'', includes a requirement for the Secretary of HHS to make a determination whether a set of activities prescribed in section 2627 of the Public Health Service (PHS) Act (42 U.S.C. 300ff–35), have become routine practice in the United States. In making this determination, the Secretary is required to consult with the States and other public or private entities that have knowledge or expertise relevant to the determination.

The purpose of this notice is to request comments from States and such other public or private entities with knowledge or expertise relevant to the practice of activities (1) through (4) in section 2627 of the PHS Act (42 U.S.C. 300ff–35). After consideration of comments submitted, the CDC will provide a summary of comments received to the Secretary as part of the process leading to the Secretary's determination required by Section 2626 of the PHS Act (42 U.S.C. 300ff–34).

DATES: The public is invited to submit comments on the practice of activities (1) through (4) in Section 2627 of the PHS Act by November 23, 1998.

ADDRESSES: Comments should be submitted to: Technical Information and Communication Branch, Division of HIV/AIDS Prevention—Intervention, Research, and Support, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–49, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: Technical Information and Communication Branch, Division of HIV/AIDS Prevention—Intervention, Research, and Support, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), telephone (404) 639–2072.

SUPPLEMENTARY INFORMATION: Section 2626(d) of the Public Health Service Act (42 U.S.C. 300ff–34), directs the Secretary to publish in the **Federal Register** ''a determination of whether it has become a routine practice in the provision of health care in the United States to carry out each of the activities described in paragraphs (1) through (5) of section 2627. In making the determination, the Secretary shall consult with the States and with other public or private entities that have knowledge or experience relevant to the determination.'' The activities described in section 2627 are as follows: ''(1) In the case of newborn infants who are born in the State and whose biological mothers have not undergone prenatal testing for HIV disease, that each such infant undergo testing for such disease. (2) That the results of such testing of a newborn infant be promptly disclosed in accordance with the following, as applicable to the infant involved: (A) To the biological mother of the infant (without regard to whether she is the legal guardian of the infant). (B) If the State is the legal guardian of the infant: (i) To the appropriate official of the State agency with responsibility for the care of the infant. (ii) to the appropriate official of each authorized agency providing assistance in the placement of the infant. (iii) if the authorized agency is giving significant consideration to approving an individual as a foster parent of the infant, to the prospective adoptive parent. (iv) if the authorized agency is giving significant consideration to approving an individual as an adoptive parent of the infant to the prospective adoptive parent. (C) If neither the biological mother nor the State is the legal guardian of the infant, to another legal guardian of the infant. (D) To the child's health care provider. (3) That, in the case of prenatal testing for HIV disease that is conducted in the State, the results of such testing be promptly disclosed to the pregnant woman involved. (4) That, in disclosing the test results to an individual under paragraph (2) or (3), appropriate counseling on the human immunodeficiency virus be made available to the individual (except in the case of a disclosure to an official of a State or an authorized agency).'' The requirement of Section 2627 (5) was deleted for the purposes of Section 2626 through a subsequent technical amendment enacted into law.

The term routine practice provided in section 2626 (d) was not defined within the statute of Public Law 104–146 (42 U.S.C. 300ff–34) . The joint explanatory statement of the committee on conference included the following legislative history on page 46 of the Conference Report 104–545 regarding the Secretary's determination: ''(2) Within 2 years following the implementation of such a system, the Secretary will make a determination whether mandatory HIV testing of all infants born in the U.S. whose mothers have not undergone prenatal HIV testing has become a routine practice. This determination will be made in consultation with States and experts.''

Section 2628 of the Public Health Service Act (42 U.S.C. 300ff–36) directs the Secretary to request that the Institute of Medicine (IOM) of the National Academy of Sciences evaluate the extent to which State efforts have been effective in reducing the perinatal transmission of HIV and an analysis of the existing barriers to the further reduction in such transmission. The IOM assembled a 14-member expert committee with combined expertise in obstetrics and gynecology, pediatrics, preventive medicine, and other relevant specialties, social and behavioral sciences, public health practice, epidemiology, program evaluation, health services research, bioethics, and public health law. The IOM committee

reviewed a wide variety of quantitative and qualitative information pertaining to the prevention of perinatal HIV transmission. To augment the committee's two public workshops and a series of site visits through which the committee consulted a wide array of state and local public health officials and other policy makers, health care providers, consumers, ethicists, advocacy groups for women and children with HIV and others affected and concerned with these policy issues.

This notice will build upon the testimony and material already provided to the IOM as part of its statutorily required evaluation by seeking any additional public comment beyond that already provided to the IOM as part of its consultative process. The purpose of this notice is not to duplicate the testimony, data or other information and background material already provided to the IOM committee through its workshops, site visits, and other information gathering and consultative activities.

Dated: November 3, 1998.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–29903 Filed 11–6–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0633]

Approval of an Alternative Requirement of the Mammography Quality Standards Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Approval of an Alternative Requirement of the Mammography Quality Standards Act'' (the MQSA). The MQSA final regulations require that the collimation of the mammography unit permit the x-ray field to extend to or beyond the edges of the image receptor. FDA has approved a request from General Electric (GE) Medical Systems for an alternative to the MQSA requirement to apply to GE Senographe mammographic systems.

ADDRESSES: Submit written requests for single copies of the ''Approval of an Alternative Requirement of the Mammography Quality Standards Act'' document to the Division of Mammography Quality and Radiation Programs, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–594–3306. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the alternative requirement.

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The MQSA final regulations in 21 CFR part 900 will become effective on April 28, 1999. Under § 900.12(e)(5)(vii)(A) (21 CFR 900.12(e)(5)(vii)(A)), the regulations will require that the collimation of a mammography unit permit the x-ray field to extend to or beyond the edges of the image receptor. This provision was made because some facilities stressed the importance of blackening the x-ray film to the edges. These facilities stated that this would help eliminate the effect of view box light passing through the unexposed edges of the film on accuracy of interpretation. However, the current Electronic Product Radiation Control (EPRC) performance standards require that mammography units be manufactured to ensure that the x-ray field does not extend beyond the nonchest wall edges of the image receptor.

Although it is possible for a mammography unit to meet both of these sets of standards, it has come to the agency's attention that certain GE models were designed to prevent the x-ray field from reaching the nonchest wall edges of the image receptor. These models, which make up a large proportion of the mammography units currently in use in facilities, were designed to meet the EPRC standard. GE requested that an alternative requirement be approved that would allow, but not require, the x-ray field to extend to or beyond the edge of the image receptor, permitting continued use of the presently installed units without modification.

Under the provisions of 21 CFR 900.18, the agency granted the request for an alternative requirement. The alternative requirement applies to all GE Senographe mammographic systems including models 500T, 600T, 700T, 800T, and DMR.

II. Electronic Access

In order to receive a copy of the ''Approval of an Alternative Requirement of the Mammography Quality Standards Act'' to § 900.12(e)(5)(vii)(A) via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from the touch-tone telephone. At the first voice prompt press 1 to access the Division of Small Manufacturers Assistance Facts, at second voice prompt press 2, and then enter the document number 2249 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the alternative requirement may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text graphic, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the ''Approval of an Alternative Requirement of the Mammography Quality Standards Act'' to § 900.12(e)(5)(vii)(A), device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www. fda.gov/ cdrh''. ''Approval of an Alternative Requirement of the Mammography Quality Standards Act'' to § 900.12(e)(5)(vii)(A) will be available at ''http://www.fda.gov/cdrh/dmqrp.html''.

Dated: October 28, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health

[FR Doc. 98–29751 Filed 11–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0447]

Protection of Human Subjects: Categories of Research That May Be Reviewed by the Institutional Review Board (IRB) Through an Expedited Review Procedure

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: On November 10, 1997, the Food and Drug Administration (FDA), in consultation with the Office for Protection from Research Risks (OPRR) at the National Institutes of Health, requested written comments relating to the proposed republication of the list that identifies certain research activities involving human subjects that may be reviewed by the Institutional Review Board (IRB) through the expedited review procedure authorized in 21 CFR 56.110. The comment period closed on March 10, 1998. FDA and OPRR received a combined total of 108 comments. After a review of the comments, FDA and OPRR are now simultaneously publishing identical revised lists of categories of research activities that may be reviewed by the IRB through the expedited review procedure.

EFFECTIVE DATE: The revised list is effective November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Paul W. Goebel, Jr., Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1685.

SUPPLEMENTARY INFORMATION: The FDA regulations for protection of human subjects can be found under part 50 (21 CFR part 50), and the regulations for the IRB's can be found under part 56 (21 CFR part 56). The regulations require, with limited exceptions, obtaining and documenting legally effective informed consent for all human subjects of research on FDA regulated products and review of research involving human subjects by an IRB.

Section 56.110 provides for expedited IRB review procedures for certain categories of research involving no more than minimal risk, and for minor changes in previously approved research during the period for which approval is authorized. The list that is referenced in § 56.110(a) was originally published in the **Federal Register** of January 27, 1981 (46 FR 8980), as a notice of a list of research activities that could be reviewed by the IRB through the expedited review procedures set forth in the FDA's regulations. OPRR has a separate codification that references the Expedited Review List for matters under the Department of Health and Human Services' (HHS) jurisdiction (45 CFR part 46). The HHS list was published in the **Federal Register** on January 26, 1981 (46 FR 8392). The FDA and HHS lists published in 1981 differ slightly, in that item nine on the HHS list, concerning research on individual or group behavior, pertains only to 45 CFR 46.110. Because behavioral research is not specifically regulated by FDA, that category was not included in the list published by FDA.

The comments received in response to the November 10, 1997 (62 FR 60607), proposal by FDA and OPRR to revise the 1981 expedited review list overwhelmingly supported the proposed revision of the list. Three comments indicated that there should be no expedited review available at all. These comments misunderstood the purpose of expedited review, expressing concern that allowing expedited IRB review also removes the requirement for informed consent of study subjects. FDA and OPRR disagree with these three comments and believe that expedited review is an appropriate part of the IRB review process. In addition, deleting the expedited review process would require a regulatory change to section 110 of the Federal Policy, which is beyond the scope of this revision. However, in response to these comments paragraph (E) has been added to the Applicability section I of this document to make it clear that the standard requirements for informed consent must be met regardless of the type of review—expedited or convened—utilized by the IRB.

The following discussion summarizes the 108 comments received and the resulting changes. In response to over 40 comments expressing concern that the general principles that apply to all research categories could be easily misinterpreted, the introductory paragraph to the 1981 list has been reformatted into six general principles that apply to the entire list. The parenthetical in the introductory sentence to the 1981 list ''(carried out through standard methods)'' has been deleted in response to comments that this phrase served no particular purpose in the 1981 list.

The reformatted general principles are set forth in paragraphs (A) through (G). Paragraph (C) makes it clear that the IRB must consider, for all categories, whether identification of the subjects or their responses would reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, insurability, reputation, or be stigmatizing, unless reasonable and appropriate protections will be implemented so that risks related to invasion of privacy and breach of confidentiality are no greater than minimal. At the time of the publication of the 1981 list, FDA routinely considered only the medical risk to subjects in determining whether a study imparted greater than minimal risk. Since that time, the scope of research projects that are under FDA purview has expanded to include activities that could place the subjects at risk for the harms listed in paragraph (C). Therefore, the IRB's reviewing studies of FDA regulated products may need to consider the listed nonmedical harms. For certain studies subject to regulation under 45 CFR part 46, these concerns have always been implicit in determining whether an activity is a minimal risk activity. The words ''insurability'' and ''be stigmatizing'' have been added to the new list to help ensure that the IRB's consider these potential risks during their review.

Two comments point out that classified research must be reviewed by the IRB at a convened meeting. FDA and OPRR agree and have added paragraph (D), which prohibits expedited review for classified research involving human subjects. This is in accordance with the March 27, 1997, Presidential memorandum that proposed the elimination of an expedited review procedure for all classified research involving human subjects.

Paragraph (E) serves as a reminder to the IRB's that informed consent and expedited review are two totally separate issues. This responds to concerns that allowing an increase in the scope of research eligible for expedited review would result in more waivers of informed consent. Research reviewed under the expedited review procedure is not necessarily eligible for waiver or alteration of informed consent. All research, regardless of whether it meets the conditions for expedited IRB review, must conform to the applicable requirements for obtaining and documenting informed consent. Informed consent must be obtained and documented unless the research meets one of the conditions for waiving, excepting, or otherwise altering the informed consent requirements that are set forth in 45 CFR 46.116 and 46.117, and §§ 50.23, 50.24, and 56.109(c).

The list of research eligible for expedited review continues to fall into nine categories. Category one,

enumerated as category nine on the 1981 list, addresses the availability of expedited review for marketed drugs and devices. This category now contains citations to the investigational drug and device regulations and provides when expedited review of research on marketed drugs (including biologics) would not be appropriate. This modification was in response to five comments that raised questions about these issues. FDA and OPRR on their own initiative have added wording to set out in greater detail the conditions that must be met in order for an IRB to review research with a medical device using expedited procedures.

Over 45 comments suggested certain changes to proposed category two, formerly category four in the 1981 list, addressing the collection of blood. The suggested changes include addition of many specific conditions, including limits on the amount withdrawn, collection procedures, and limits on the physical condition of the subjects. In response to these suggestions, the category has been reorganized to set general limits that the specific procedure must meet. The procedures for the collection of blood now include finger stick, heel stick, ear stick, and venipuncture. The four proposed subcategories were recombined as two separate subcategories. The critical issues to be considered include weight, physical condition, and amount of blood to be collected. The first subcategory (a) concerns healthy nonpregnant adults. The second subcategory (b) concerns all other adults and children. For this second subcategory, the IRB will need to make certain judgments including: Consideration for the age, weight, and health of the subjects in light of the amount of blood to be collected, the frequency with which it will be collected, and the collection procedure. The final sentence of subcategory (b) reads: ''For these subjects, the amount drawn may not exceed the lesser of 50 mL or 3 mL per kg in an 8-week period and collection may not occur more than 2 times per week.'' While an expedited review of research involving pregnant women is permissible under the revised section, this last sentence makes it clear that the amount of blood that can be drawn is subject to limitations greater than those on healthy nonpregnant adults. Also in response to public comment, the proposed phrase ''medically vulnerable adults'' has been deleted.

More than 24 comments were received regarding category three, which was previously categories one and two in the 1981 list, addressing the collection of biological specimens. Some of the comments requested inclusion of specific procedures, such as throat cultures and pap smears. Some of the comments requested the category be rephrased as a general limit, setting out as examples the types of specimens and conditions for collection. In response to these comments, new category three has been reorganized to limit the manner of collection to noninvasive means. The list of specific types of biological specimens is now included as examples of the types of procedures that could fall within this category.

Categories four and five on the proposed list have been combined into one new category, category five, addressing research involving materials collected or which will be collected solely for nonresearch purposes. This new category five was formed in response to comments that raised questions about why the two categories separated out existing and prospectively collected materials. The term ''nonresearch purposes'' was maintained in new category five to describe the origins of the research materials.

An explanatory note has been added to categories five and seven to clarify that some research described in these categories may be exempt from the IRB review under 45 CFR 46.101 of the HHS regulations for the protection of human subjects. Thus, the listing of those categories refers only to nonexempt research.

Category six on the list proposed in November 1997 has become category four on the revised list and addresses the collection of data through noninvasive procedures. In response to several comments that raised concerns about the use of anesthesia and sedation with magnetic resonance imaging procedures, expedited review will not be allowed for any procedure employing anesthesia or sedation. In response to more than 24 comments, the general term ''noninvasive procedures'' now applies to all procedures in this category. The specific procedures to which expedited review was limited in proposed category six, are included in new category four as examples of the types of procedures that could qualify for expedited review. FDA and OPRR, on their own initiative, added wording to clarify that studies intended to evaluate the safety and effectiveness of medical devices or using medical devices that are not cleared or approved for marketing by FDA are generally not eligible for expedited review.

Category seven on the proposed list is now category six on the revised list and deals with the collection of data from voice, video, digital, or image recordings. In the proposal, the IRB was to consider certain risks to the subjects in this category before granting expedited review. In response to several comments that inquired why only this type of research should receive this consideration, it was incorporated as a guiding principle in the Applicability section I of this document and is no longer simply specific to this category.

Category eight on the proposed list is now category seven on the revised list. This category was added to the 1981 list with the proposal and concerns research on individual or group characteristics or behavior. At the time of the publication of the 1981 list, this category was not included in the FDA list because FDA routinely considered only the medical risk to subjects in determining whether a study imparted greater than minimal risk. Since that time, the scope of research projects that are under FDA purview has expanded to include activities that are listed in new category seven. Therefore, studies related to FDA-regulated products might employ such methodology.

Over 30 comments requested this category be simplified and rephrased so that researchers and IRB's could more readily determine whether their study is eligible for expedited review. In response, the following changes have been made. The condition that the research does not involve ''stress'' has been deleted; the subsections in the proposed list have been combined to eliminate the distinction between research involving adults and research involving children; research on oral history has been included in response to six comments; and specific research and research techniques have been noted. The category has been reorganized to include research involving motivation, identity, language, communication, cultural beliefs or practices, and social behavior as examples of research on individual or group characteristics or behavior. Methods of conducting such research are now separately listed and have been expanded to include oral history, program evaluation, human factors evaluation, and quality assurance methodologies. As in new category six, the qualification that requires consideration of certain kinds of risks to subjects has been deleted from this category, as it is now a general guiding principle, (C), which applies to the entire list.

Category nine on the proposed list, research previously approved by the convened IRB, received more than 50 comments explicitly applauding this category. It has now been divided into new categories eight and nine. New

category eight identifies three situations in which research that is greater than minimal risk and has been initially reviewed by the convened IRB, could undergo subsequent continuing review by the expedited review procedure. The new category nine concerns continuing review of research that is not greater than minimal risk, but had to undergo initial review by a convened IRB because it did not meet the criteria of categories two through seven on this list.

Certain other minimal changes have been made for editorial purposes or to clarify certain words that were used in the proposed list. Accordingly, the list of categories of research which may be reviewed by the IRB through an expedited review procedure is amended as set forth:

Categories of Research That May Be Reviewed by the Institutional Review Board (IRB) Through an Expedited Review Procedure [1]

Applicability

(A) Research activites that (1) present no more than mimimal risk to human subjects, and (2) involve only procedures listed in one or more of the following categories, may be reviewed by the IRB through the expedited review procedure authorized by 45 CFR 46.110 and 21 CFR 56.110. The activities listed should not be deemed to be of minimal risk simply because they are included on this list. Inclusion on this list merely means that the activity is eligible for review through the expedited review procedure when the specific circumstances of the proposed research involve no more than minimal risk to human subjects.

(B) The categories in this list apply regardless of the age of subjects, except as noted.

(C) The expedited review procedure may not be used where identification of the subjects and/or their responses would reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, insurability, reputation, or be stigmatizing, unless reasonable and appropriate protections will be implemented so that risks related to invasion of privacy and breach of confidentiality are no greater than minimal.

(D) The expedited review procedure may not be used for classified research involving human subjects.

(E) IRBs are reminded that the standard requirements for informed consent (or its waiver, alteration, or exception) apply regardless of the type of review—expedited or convened—utilized by the IRB.

(F) Categories one (1) through seven (7) pertain to both initial and continuing IRB review.

Research Categories

(1) Clinical studies of drugs and medical devices only when condition (a) or (b) is met.

(a) Research on drugs for which an investigational new drug application (21 CFR Part 312) is not required.

(Note: Research on marketed drugs that significantly increases the risks or decreases the acceptability of the risks associated with the use of the product is not eligible for expedited review.)

(b) Research on medical devices for which (i) an investigational device exemption application (21 CFR Part 812) is not required; or (ii) the medical device is cleared/approved for marketing and the medical device is being used in accordance with its cleared/approved labeling.

(2) Collection of blood samples by finger stick, heel stick, ear stick, or venipuncture as follows:

(a) From healthy, nonpregnant adults who weigh at least 110 pounds. For these subjects, the amounts drawn may not exceed 550 ml in an 8 week period and collection may not occur more frequently than 2 times per week; or

(b) from other adults and children,[2] considering the age, weight, and health of the subjects, the collection procedure, the amount of blood to be collected, the frequency with which it will be collected. For these subjects, the amount drawn may not exceed the lesser of 50 ml or 3 ml per kg in an 8 week period and collection may not occur more frequently than 2 times per week.

(3) Prospective collection of biological specimens for research purposes by noninvasive means.

Examples: (a) hair and nail clippings in a nondisfiguring manner; (b) deciduous teeth at time of exfoliation or if routine patient care indicates a need for extraction; (c) permanent teeth if routine patient care indicates a need for extraction; (d) excreta and external secretions (including sweat); (e) uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue; (f) placenta removed at delivery; (g) amniotic fluid obtained at the time of rupture of the membrane prior to or during labor; (h) supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylatic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques; (i) mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings; (j) sputum collected after saline mist nebulization.

(4) Collection of data through noninvasive procedures (not involving general anesthesia or sedation) routinely employed in clinical practice, excluding procedures involving x-rays or microwaves. Where medical devices are employed, they must be cleared/approved for marketing. (Studies intended to evaluate the safety and effectiveness of the medical device are not generally eligible for expedited review, including studies of cleared medical devices for new indications.)

Examples: (a) physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy; (b) weighing or testing sensory acuity; (c) magnetic resonance imaging; (d) electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, ultrasound, diagnostic infrared imaging, doppler blood flow, and echocardiography; (e) moderate exercise, muscular strength testing, body composition assessment, and flexibility testing where appropriate given the age, weight, and health of the individual.

(5) Research involving materials (data, documents, records, or specimens) that have been collected or will be collected solely for nonresearch purposes (such as medical treatment or diagnosis).

(Note: Some research in this category may be exempt from the HHS regulations for the protection of human subjects. *45 CFR 46.101(b)(4).* This listing refers only to research that is not exempt.)

(6) Collection of data from voice, video, digital, or image recordings made for research purposes.

(7) Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior) or research employing survey, interview, oral history, focus group,

[1] An expedited review procedure consists of a review of research involving human subjects by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB in accordance with the requirements set forth in 45 CFR 46.110.

[2] Children are defined in the HHS regulations as ''persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.'' 45 CFR 46.402(a).

program evaluation, human factors evaluation, or quality assurance methodologies.

(Note: Some research in this category may be exempt from the HHS regulations for the protection of human subjects. *45 CFR 46.101(b)(2) and (b)(3).* This listing refers only to research that is not exempt.)

(8) Continuing review of research previously approved by the convened IRB as follows:

(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or

(b) Where no subjects have been enrolled and no additional risks have been identified; or

(c) Where the remaining research activities are limited to data analysis.

(9) Continuing review of research, not conducted under an investigational new drug application or investigational device exemption where categories two (2) through eight (8) do not apply but the IRB has determined and documented at a convened meeting that the research involves no greater than minimal risk and no additional risks have been identified.

Dated: November 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–29748 Filed 11–6–98; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0670]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the 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; *Title of Information Collection:* Team Composition and Workload Report and Supporting Regulations in 42 CFR 493.1–493.2001; *Form No.:* HCFA–0670 (OMB# 0938–0583); *Use:* This form requests resource utilization information on Medicare and Medicaid providers, suppliers, and CLIA laboratories. The data is used to determine Federal reimbursement for all participating health care facilities that accept Medicare and Medicaid beneficiaries.; *Frequency:* As needed; *Affected Public:* State, Local, and Tribal Government, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 53; *Total Annual Responses:* 449,252; *Total Annual Hours:* 71,667.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 2, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–29959 Filed 11–6–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–250]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the 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.

Title of Information Collection: Skilled Nursing Facility (SNF) Resident Assessment MDS Data and Supporting Regulations in 42 CFR 413.343 and 424.32.

Form No.: HCFA–R–250 (OMB# 0938–0739).

Use: Skilled Nursing Facilities (SNF's) are required to submit Resident Assessment Data as described at 42 CFR, 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR, 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data for the 5th, 30th and 60th days following admission, necessary to administer the payment rate methodology described in 413.337, is subject to the Paperwork Reduction Act.

Frequency: Monthly.

Affected Public: Business or other for-profit, and Not-for-profit.

Number of Respondents: 17,000.

Total Annual Responses: 204,000.

Total Annual Hours: 3,865,885.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 2, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–29960 Filed 11–6–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–250,254]

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; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations 42 CFR 489.20; *Form No.:* HCFA–250,254 OMB # 0938–0214; *Use:* This questionnaire will collect information from beneficiaries on health insurance coverage that is primary to Medicare. This information is necessary in order for HCFA to identify those Medicare beneficiaries who have group health insurance that would pay before Medicare, resulting in savings to the Medicare Trust Fund. Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. HCFA contracts with health insuring organizations, herein referred to as intermediaries and carriers, to process Medicare claims. HCFA charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, HCFA has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary. *Frequency:* One time only; *Affected Public:* Individuals or Households; *Number of Respondents:* 14,204,000; *Total Annual Responses:* 14,204,000; *Total Annual Hours:* 773,240.

To obtain copies of the supporting statement for the proposed paperwork collections 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: October 28, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–29961 Filed 11–6–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: October 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
Abad, Tony, Miami, FL	11/19/1998
Anderson, Louetta Mae, Houston, TX	11/19/1998
Andrews, Charles D, Atlanta, GA	11/19/1998
Arocha, Alejandro, Miami, FL	11/19/1998

Subject, city, state	Effective date
Better Health Care, Inc., Falmouth, ME	11/19/1998
Bliss, Christopher E, Attleboro, MA	11/19/1998
Bombino, Aesthor L, Miami, FL	11/19/1998
Cash, Joann Fletcher, East Point, GA	11/19/1998
CDA Medical Transport, Atlanta, GA	11/19/1998
Clark, John Rollard, Jacksonville, NC	11/19/1998
Cott, Mary Elizabeth, Falmouth, ME	11/19/1998
Douglas, Dawn Moore, New Port Richey, FL	11/19/1998
Feliu, Omar, Miami, FL	11/19/1998
Fields, Becky D, Dickeyville, WI	11/19/1998
Glover, J Michael, Texarkana, TX	11/19/1998
Harvey, Michael, Springfield, IL	11/19/1998
Headrick, Teri Taylor, S Pittsburg, TN	11/19/1998
Johnson, Henry, Mililani, HI	11/19/1998
Lab I, Inc, Ravenna, OH	11/19/1998
Lima, Susy, Miami, FL	11/19/1998
Mayberry, Marie Victoria, Southfield, MI	11/19/1998
Nadarajan, Annamali, Birmingham, AL	11/19/1998
Neill, William A, Hiram, OH	11/19/1998
Newport Center, Inc, Battle Creek, MI	11/19/1998
Olson, Robert C, Neptune Beach, FL	11/19/1998
Parkside Mental Health, Inc, Detroit, MI	11/19/1998
Pendleton, Diane, Jonesboro, GA	11/19/1998
Peterson Enterprises, Inc, Columbus, OH	11/19/1998
Pina, Stephen A, Philadelphia, PA	11/19/1998
Podriguez, Gerardo, Miami, FL	11/19/1998
Rodriguez, Ever, Miami, FL	11/19/1998
Ruidiaz, Sori Estela, Miami, FL	11/19/1998
S & S Convalescent Transport, Decatur, GA	11/19/1998
Schreier, Steve, W Bloomfield, MI	11/19/1998
Smith, Betty A, Columbus, OH	11/19/1998
Solomon, Daryl L, Decatur, GA	11/19/1998
Stokes, Jolie, Ty Ty, GA	11/19/1998
Thomas, Dale, Tallahassee, FL	11/19/1998
Vicaria, Carlos Concepcion, Miami, FL	11/19/1998
Wagnac, Marie, Providence, RI	11/19/1998
Walsh-Donehoo, Ellen Joan, Gainesville, FL	11/19/1998
FELONY CONVICTION FOR HEALTH CARE FRAUD	
Eckert, Kellie L, Marshalltown, IA	11/19/1998
Zentner, Jane M, Green Bay, WI	11/19/1998
FELONY CONTROL SUBSTANCE CONVICTION	
Holman-Pierce, Geneva Ann, Marion, VA	11/19/1998
PATIENT ABUSE/NEGLECT CONVICTIONS	
Auten, Angela A, Des Moines, IA	11/19/1998
Bloom, Lee Roy, Jr, Mt Pleasant, IA	11/19/1998
Boyce, Marie Girtrue, Searcy, AR	11/19/1998
Burse, Tameka A, Chattanooga, TN	11/19/1998
Campbell, Barbara J, Cincinnati, OH	11/19/1998
Carson, Darlene, Corsicana, TX	11/19/1998
Crawford, Carl Thomas, Detroit, MI	11/19/1998
Douglas, Karen Suzanne, Columbia, MD	11/19/1998
Freeman, David J, Millington, TN	11/19/1998
Gerdine, Nathaniel Dett, Limon, CO	11/19/1998
Hayes, Brian Dale, Elmore City, OK	11/19/1998
Jiles, Shunja Monique, Troup, TX	11/19/1998
Lee, Felicia Gayle, Shreveport, LA	11/19/1998
Lewis, Sandra F, Galloway, TN	11/19/1998
Loggains, Christopher Jason, Jonesboro, AR	11/19/1998
Malca-Lopez, Jose M, Salt Lake City, UT	11/19/1998
Nisby, Robby Jean, Galloway, TN	11/19/1998
Patel, Narendra M, Dalton, GA	11/19/1998
Perkins, Heather E, Nevada, IA	11/19/1998
Powell, Phillip Hardy, Marshall, TX	11/19/1998
Rios, Juan A, Moline, IL	11/19/1998
Saintz, Mark Steven, Topeka, KS	11/19/1998
Sawyer, Tara D, Waterloo, IA	11/19/1998
Shelton, Joe L, Orient, OH	11/19/1998

Subject, city, state	Effective date
Singleton, Mary Catherine, Tacoma, WA	11/19/1998
Uy, Rosemary, Staten Island, NY	11/19/1998
CONTROLLED SUBSTANCE CONVICTIONS	
Peffer, Douglas Jamus, Camp Connell, CA	11/19/1998
LICENSE REVOCATION/SUSPENSION/SURRENDERED	
Baker, Kathleen E, Hyannis, MA	11/19/1998
Bennett, John David, Fresno, CA	11/19/1998
Bergman, Marlena, Las Vegas, NV	11/19/1998
Bischel, Paul J, Farmington, MN	11/19/1998
Boardman, Margaret A, Somerset, MA	11/19/1998
Boulis, Markell D, Mt Lebanon, PA	11/19/1998
Brase, Susan Melinda, Visalia, CA	11/19/1998
Brown, William E, Atoka, OK	11/19/1998
Byrne, Geoffrey E, Phoenix, AZ	11/19/1998
Caffray, Mary A, S Boston, MA	11/19/1998
Casper, Jon Nathan, Bemidji, MN	11/19/1998
Centrealla, Michael, Golden Valley, MN	11/19/1998
Chancellor, Robert S, Las Vegas, NV	11/19/1998
Clem, Tammy J, Stanley, VA	11/19/1998
Collins, Gina Aline, Oroville, CA	11/19/1998
Corbett, Jason M, Brookline, MA	11/19/1998
Crawford, Mary, Milford, CT	11/19/1998
Croslin, Michael Larry, Santa Cruz, CA	11/19/1998
Culbertson, Virginia Blair, Wollaston, MA	11/19/1998
Daniels, Tara, Middletown, CT	11/19/1998
Douglas, Angela M, Lynchburg, VA	11/19/1998
Dufresne, Roland F, Coventry, RI	11/19/1998
Dukes, Deborah Renee, Hot Springs, AR	11/19/1998
Dyke, Marshall James, Magnolia, TX	11/19/1998
Eglash, Albert, San Luis Obispo, CA	11/19/1998
Eklund, Ruth Joyce, Delhi, CA	11/19/1998
Ezzell, Sueann, Cincinnati, OH	11/19/1998
Field, Thomas Joseph, Stockton, CA	11/19/1998
Flood, Karen, Wilton, CT	11/19/1998
Franklin, Roslyn Marie, E Palo Alto, CA	11/19/1998
Freeman, Kimberly W, Richmond, VA	11/19/1998
Gemoets, Thomas Henry, Houston, TX	11/19/1998
Gurneau, Manuel Raymond, Minneapolis, MN	11/19/1998
Gustafson, Eric, Covina, CA	11/19/1998
Haivala, Bret Arthur, Piedmont, SD	11/19/1998
Hakalmazian, Gregory, Palos Heights, IL	11/19/1998
Hampton, Patryce M, Roanoke, VA	11/19/1998
Harrison, John R, Haverill, MA	11/19/1998
Harvey-Porto, Donna, Pensacola, FL	11/19/1998
Horton, Rhiannon M, Hudson, NH	11/19/1998
Hutchison, Jimmie Lloyd, Othello, WA	11/19/1998
Iwejor, Christine C, Virginia Beach, VA	11/19/1998
Jensen, James C, Lexington, KY	11/19/1998
Jones, Constance L, Richmond, VA	11/19/1998
Larson, Patricia E, St Cloud, MN	11/19/1998
Leonard, Kathleen Elizabeth, Norwood, MA	11/19/1998
Lett, Dana Jo, Arkadelphia, AR	11/19/1998
Lipson, David, San Diego, CA	11/19/1998
Lynch, Janet, Oakdale, CT	11/19/1998
Markell, Mary Hope, Silverado, CA	11/19/1998
Mastro, Annette Lorraine, Quincy, MA	11/19/1998
McCain, Kathleen C, Portsmouth, VA	11/19/1998
Mecchi, Carlena Myrle, Napa, CA	11/19/1998
Mitchell, Lori F, Willowick, OH	11/19/1998
Morgan, Christine M, Derry, NH	11/19/1998
Myers, Elva F, Urbanna, VA	11/19/1998
Nguyen, Thuong VU, San Jose, CA	11/19/1998
Nuesse, William E, Camden, ME	11/19/1998
Olliver, Nancy L, Richmond, VA	11/19/1998
Pacold, Astra, Riverside, IL	11/19/1998
Pratt, Theresa, Mesquite, NV	11/19/1998
Proffitt, Stephen D, Longview, WA	11/19/1998
Quish, Peter Dennis, Arlington, MA	11/19/1998
Rissover, Howard E, Cincinnati, OH	11/19/1998

Subject, city, state	Effective date
Ritchey, Rosetta M, Robbinsdale, MN	11/19/1998
Ruby, Sharon T, Como, MS	11/19/1998
Russell, John L, Oxford, MA	11/19/1998
Schwartz, Steven, Stuart, FL	11/19/1998
Sexton, Patricia Louise, Upland, CA	11/19/1998
Sheehan, Helen Dawn, Haverhill, MA	11/19/1998
Sims, Faye, Fort Wayne, IN	11/19/1998
Singh, Rajinder, E Liverpool, OH	11/19/1998
Sorensen, Donald J, Palos Verdes Estates, CA	11/19/1998
Steinberg, Ira B, Lewiston, ME	11/19/1998
Toth, Michael S, Richmond, VA	11/19/1998
Turner, Ronald Ross, Portsmouth, OH	11/19/1998
Vaillancourt, James Alan, San Luis Obispo, CA	11/19/1998
Wells, Murlene, Clarksdale, MS	11/19/1998
Williams, Karen B, Union City, CT	11/19/1998
Williamson, Gail Helen, Woodland Hills, CA	11/19/1998
Woolingham, Dawn L, Harrisburg, PA	11/19/1998
Zervas, James John, Springfield, MA	11/19/1998
FEDERAL/STATE EXCLUSION/SUSPENSION	
Chime, Chudi Gabriel, Jamaica, NY	11/19/1998
Discovery Behavorial Health, Phillipsburg, NJ	11/19/1998
Honablue, Richard R, Williamsburg, VA	11/19/1998
Kadisha, Inc, Newark, NJ	11/19/1998
Mediscope Diagnostic Lab, Inc, Plainfield, NJ	11/19/1998
Ross, Robert N, Cliffside Park, NJ	11/19/1998
Smolin, Steve Allen, Brooklyn, NY	11/19/1998
Tindale, Celia McDonald, Brooklyn, NY	11/19/1998
FRAUD/KICKBACKS	
Manatee Medical Products, Deltona, FL	06/24/1998
OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
Atlas Dental Clinic, Birmingham, AL	11/19/1998
Dynamic Medical Equipment, Inc, Miami, FL	11/19/1998
ESP Home Health, Miami, FL	11/19/1998
Experience Home Health, Miami, FL	11/19/1998
FL Impotence Clinic of Pasco, New Port Richey, FL	11/19/1998
Gieger Ambulance Service, Coleman, FL	11/19/1998
Hand in Hand Counseling SVCS, College Park, GA	11/19/1998
Health Guard Screening, Inc, Ft Myers, FL	11/19/1998
KK Pharmacy, Inc, Osage Beach, MO	11/19/1998
National Impotence Consultants, Neptune Beach, FL	11/19/1998
New Life Home Health, Miami, FL	11/19/1998
NFIC, Inc, Neptune Beach, FL	11/19/1998
Tender Guardian Home Health, Miami, FL	11/19/1998
Terdac, Inc, Tallahassee, FL	11/19/1998
DEFAULT ON HEALTH LOAN	
Baker, Yvette Ketai, Little Rock, AR	10/13/1998
Bell, Keith M, Montgomery, NY	11/19/1998
Blue, Barbara Jean, Missouri City, TX	11/19/1998
Curran, Douglas Joseph, Fresno, CA	11/19/1998
Davisson, Mark J, Napa, CA	11/19/1998
Defrank, Samuel N, Garland, TX	11/19/1998
Dotson, Herman, Dallas, TX	11/19/1998
Freeman, Hogan Bernard, Johns Island, SC	11/19/1998
Gadsby, Michael Owen, S Pasadena, CA	11/19/1998
Goldbeck, Donald E, Encino, CA	11/19/1998
Harding, Susan M, Austin, TX	11/19/1998
Ho, Wook, Los Angeles, CA	11/19/1998
Hollenbeck, Ann-Margaret Phyllis, Edmonds, WA	11/19/1998
Holloway, McDaniel, Detroit, MI	11/19/1998
Horn, Steven Craig, Oklahoma City, OK	11/19/1998
Kiser, Curtis, Newnan, GA	11/19/1998
Kokosenski, Terry J, China Lake, CA	11/19/1998
Koris, Michael A, Bernardsville, NJ	11/19/1998
Moore, Thomas A, Scarborough, ME	11/19/1998
Murphy, Roger C, Springfield, NJ	11/19/1998
Neumann, Barry Albert, Albuquerque, NM	11/19/1998

Subject, city, state	Effective date
Peart, John A, Fresno, CA	11/19/1998
Pessu-Uwah, Audrey O, New Castle, DE	11/19/1998
Porter, Rodney Wayne, Corning, AR	11/19/1998
Pyne, Keith E, Dallas, TX	11/19/1998
Rapena, Robert J, Jackson Hgts, NY	11/19/1998
Reed, Fred Lee, Jr, Long Beach, CA	11/19/1998
Reich, Stephen Geffry, Owings Mills, MD	11/19/1998
Rodriguez, Robert L, San Antonio, TX	11/19/1998
Rodriguez, Joe Henry, Dallas, TX	11/19/1998
Root, Richard A, Grand Rapids, MI	11/19/1998
Rusk, Kent A, Denmark, WI	11/19/1998
Russell, Michael R, Newburyport, MA	11/19/1998
Sabir, Rafiq Abdus, New York, NY	11/19/1998
Shay, Fred G, Chandler, AZ	11/19/1998
Smith, Rusty A, Santa Barbara, CA	11/19/1998
Snook (Allen), Debra Lynn, Dodge City, KS	11/19/1998
Staton, Sonya E, Newton, MA	11/19/1998
Stewart (Carballo), Charles W, Fayetteville, NC	11/19/1998
Terrian, Robert Joseph, Bedford, TX	11/19/1998
Torres, Jerry, Espanola, NM	11/19/1998
Tyrrel, Robert TY, Atlanta, GA	11/19/1998
Worthy, Edwin, Jr, Roxbury, MA	11/19/1998
Yoder, Terry E, Belton, MO	11/19/1998
OWNERS OF EXCLUDED ENTITIES	
Graham, Marva C, Columbia, MD	11/19/1998

Dated: November 2, 1998.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 98–29935 Filed 11–6–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement (''CRADA'') Opportunity: Drug and Method for the Therapeutic Treatment of Leukemia, Lymphoma, Hairy Cell Leukemia, Hodgkin's Disease, and Other Hematologic Malignancies

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is seeking Licensees to further develop, evaluate, and commercialize anti-Tac (Fv)–PE38, also known as LMB2, immunotoxin for the therapeutic treatment of refractory Leukemia, Lymphoma, Hairy Cell Leukemia, Hodgkin's disease and other hematologic malignancies. Anti-Tac (Fv)–PE38 (LMB2) is a recombinant immunotoxin composed of a single-chain Fv form of the anti-Tac (anti-CD25) monoclonal antibody, which binds to the α subunit of the IL2 receptor (also called P55, Tac, or CD25), fused to PE38, a mutant form of *Pseudomonas* Exotoxin A. Anti-TAC (Fv)–PE38 (LMB2) is very cytotoxic to normal or malignant cells expressing IL2 receptors and is being developed for the therapy of chronic lymphocytic leukemia, lymphoma, Hodgkin's disease and Hairy Cell Leukemia. The goal is to move the Anti-Tac (FV)–PE38 (LMB2) immunotoxin into Phase II and III clinical trials. The inventions claimed in USPN 4,892,827, entitled: ''Recombinant *Pseudomonas* Exotoxins: Construction of an Active Immunotoxin with Low Side Effects''; USSN 07/865,722, entitled: ''Recombinant Antibody-Toxin Fusion Protein''; USPN 5,696,237, entitled: ''Recombinant Antibody-Toxin Fusion Protein''; and USSN 08/461,825, entitled: ''Recombinant Antibody-Toxin Fusion Protein''; are available for either exclusive or non-exclusive licensing for these aforementioned applications only (in accordance with 35 U.S.C. 207 and 37 CFR Part 404).

ADDRESSES: Questions about licensing opportunities may be addressed to J.R. Dixon, Ph.D., 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. 206; Facsimile: (301)–402–0220; E-Mail: ''DixonJ@OD.NIH.GOV''. Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an ''Application for License to Public Health Service Inventions''.

Depending upon the mutual interests of the Licensee(s) and the NCI, a Cooperative Research and Development Agreement (CRADA) to collaborate to improve the properties of the Anti-Tac (Fv)–PE38 may also be negotiated. Proposals and questions about this CRADA opportunity may be addressed to Dr. Patrick Twomey, Technology Development Specialist, Technology Development & Commercialization Branch, National Cancer Institute, 6120 Executive Plaza South-Room 450, Rockville, Maryland 20852; Telephone: (301)–496–0477; Facsimile: (301)–402–2117; email: twomeyp@OTD.NCI.NIH.GOV. Respondees interested in submitting a CRADA Proposal should be aware that it may be necessary to secure a license to the above-mentioned patent rights in order to commercialize products arising from a CRADA.

EFFECTIVE DATE: Respondees interested in licensing the invention(s) will be required to submit an ''Application for License to Public Health Service Inventions'' on or before January 8, 1999 for priority consideration.

Interested CRADA collaborators must submit a confidential proposal summary to the NCI [attention Dr. Patrick Twomey at the aforementioned address] on or before January 8, 1999,

for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

SUPPLEMENTARY INFORMATION: In a Phase I trial, patients with hematologic malignancies and CD25 expression on malignant cells based on pre-screening immunocytochemistry and radiolabeled binding studies were given anti-Tac(Fv)–PE38 (LMB2) immunotoxin intravenously qod x 3. Thirty-two (32) patients received a total of fifty-three (53) cycles. Grade III non-hematologic toxicity was considered dose-limiting. Only 5 of the 32 patients developed significant neutralizing antibodies after the first cycle. The $T_{1/2}$ was 3–7 hours. Partial responses occurred in 5 patients including cutaneous T-cell Lymphoma, hairy cell leukemia, and chronic lymphocytic leukemia. Marginal responses were observed in two patient with Hodgkin's disease and in one patient with mantle cell lymphoma. Thus LMB–2 has activity in several forms of CD25+hematologic malignancies and is relatively non-immunogenic in this patient population.

A Cooperative Research and Development Agreement or CRADA means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate to improve the properties of Anti-Tac(Fv)–PE38. The expected duration of the CRADA would be from one (1) to five (5) years.

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing sufficient amounts of anti-Tac (Fv)–PE38 (LMB2) for clinical trails.
2. Conducting Phase 2 and Phase 3 clinical trials.
3. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
4. Planning research studies and interpreting research results.
5. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
6. Incorporating the immunotoxin into formulations in order to increase the therapeutic efficacy and decrease immunogenicity.
7. Providing immunotoxin for laboratory and animal studies.
8. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing sufficient amounts of anti-Tac (Fv)–PE38 (LMB2) for clinical trials.
2. Conducting Phase 2 and Phase 3 clinical trials.
3. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
4. Planning research studies and interpreting research results.
5. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
6. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
7. Incorporating the immunotoxin into formulations in order to increase the therapeutic efficacy and decrease immunogenicity.
8. Providing immunotoxin for laboratory and animal studies.
9. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
2. The demonstration of adequate resources to perform the research and development of this technology (e.g., facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
4. The demonstration of expertise in the commercial development and production of products related to this area of technology.
5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
6. The demonstration of expertise pertinent to the development of models to evaluate and improve the efficacy of the anti-Tac (Fv)–PE38 (LMB2) immunotoxin for the treatment of leukemias and lymphomas.
7. The demonstration of expertise in the formulation of drugs.
8. The willingness to cooperate with the NCI in the timely publication of research results.
9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: October 31, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

Dated: October 6, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 98–29989 Filed 11–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting of the Cancer Advisory Panel for Complementary and Alternative Medicine

Notice is hereby given of the first meeting of the Cancer Advisory Panel for Complementary and Alternative Medicine (CAP), November 16, 1998, at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852. The meeting is scheduled from 8:30 am to 5 pm and is open to the public. Attendance by the public will be limited to space available.

The Panel's primary responsibility is to provide expert review and evaluation of summaries of evidence for complementary and alternative medicine cancer claims by practitioners. The information compiled and evaluated by each member of the Panel will be provided to the Office of Alternative Medicine's chartered Alternative Medicine Program Advisory

Council (AMPAC) to be used during its deliberations.

The agenda includes: (1) An overview of the structure and role of the CAP; (2) a presentation on the National Cancer Institute-funded research mechanism; (3) an overview of current Office of Alternative Medicine (OAM) projects; (4) a discussion of potential future cancer clinical trials initiatives related to complementary and alternative medicine; and (5) a public comment session.

The public comment session is scheduled from 3 p.m. to 5 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify D. Geoffrey Cheung, Office of Alternative Medicine, NIH, 31 Center Drive, (MSC 2182), Building 31, Room 5B37, Bethesda, MD 20892, (301) 594–2013, FAX: (301) 594–6757. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5:00 p.m. on Thursday, November 12. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Geoffry Cheung at the address listed above up to ten days following the meeting.

For additional information please contact Ms. Odessa Colvin, Program Assistant, OAM, 31 Center Drive, MSC 2182, Building 31, Room 5B37, Bethesda, Maryland, 20892, (301–435–5175). Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Colvin in advance of the meeting.

Dated: November 2, 1998.

Ruth L. Kirschstein,

Deputy Director, National Institute of Health.

[FR Doc. 98–29984 Filed 11–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: November 17, 1998.

Time: 8 AM to 5 PM.

Agenda: Cancer Prevention in the 21st Century.

Place: Arizona Cancer Center, Kiewit Conference Room, 1515 North Campbell Avenue, Room 2851, Tucson, AZ 85724.

Contact Person: Maureen O. Wilson, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 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, National Institutes of Health, HHS)

Dated: November 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–29987 Filed 11–6–98; 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Review Group, Subcommittee D—Clinical Studies.

Date: November 30–December 1, 1998.

Time: 8 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, room 635 C, Rockville, MD 20852–7408, (301) 496–7930.

(Catalogue of Federal Domestic Assistance Program Nos. 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; 93.392, Cancer Construction, National Institutes of Health, HHS)

Dated: November 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–29988 Filed 11–6–98; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Research Dissemination to the Entertainment Industry Communities.

Date: November 10, 1998.

Time: 9 AM to 4 PM.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600

Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs; 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards, National Institutes of Health, HHS)

Dated: November 2, 1998.

Anna Snouffer,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–29985 Filed 11–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–8 (J3).

Date: December 2, 1998.

Time: 3 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982 (Telephone Conference Call).

Contact Person: Roberta J. Haber, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 2, 1998.

Anna Snouffer,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–29986 Filed 11–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Protection of Human Subjects: Categories of Research That May Be Reviewed by the Institutional Review Board (IRB) Through an Expedited Review Procedure

AGENCY: Office for Protection from Research Risks, National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: On November 10, 1997, the Office for Protection from Research Risks (OPRR), in consultation with the Food and Drug Administration (FDA), requested written comments relating to the proposed republication of the list that identifies certain research activities involving human subjects which may be reviewed by the Institutional Review Board (IRB) through the expedited review procedure authorized in 45 CFR 46.110. The comment period closed on March 10, 1998. OPRR and FDA received a combined total of 108 comments. After a review of the comments, OPRR and FDA are now simultaneously publishing identical revised lists of categories of research activities that may be reviewed by the IRB through the expedited review procedure.

EFFECTIVE DATES: The revised list is effective as of November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Michele Russell-Einhorn, Director of Regulatory Affairs, Office for Protection from Research Risks (OPRR), National Institutes of Health, 6100 Executive Blvd., Suite 3B01, Rockville, MD 20892–7507 or telephone (301) 435–5649 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Federal Policy (Common Rule) for the Protection of Human Subjects was published in the **Federal Register** on June 18, 1991 (56 FR 28003) and is employed by 17 Executive Branch agencies. This Federal Policy requires adherence to certain requirements by Federal agencies [1] and institutions receiving support from those agencies for research activities involving human subjects. The Federal Policy has three cornerstones: review of any research involving human subjects by an IRB with limited exceptions, informed consent of all research subjects; and formal, written assurance of institutional compliance with the Policy. The Department of Health and Human Services' (HHS) codification of the Federal Policy can be found at 45 CFR Part 46, Subpart A.

Section _____.110 of the Federal Policy provides for expedited review procedures for certain categories of research involving no more than minimal risk, and for minor changes in approved research. This same section gives the Secretary, HHS, the authority to amend and republish the expedited review list as needed after consultation with the departments and agencies that are subject to the Federal Policy. The expedited review list that is referenced in the Federal Policy was originally published by the Secretary, HHS in 1981 (46 FR 8392, 46 FR 8980). It listed categories of research that could be reviewed by the IRB through an expedited review procedure. The FDA also references an expedited review list (21 CFR Part 56) for matters under FDA's jurisdiction. The HHS and FDA lists have differed slightly, in that item nine (9) on the 1981 HHS expedited review list regarding certain types of behavioral research is not included in the list referenced in 21 CFR 56.110.

The comments received in response to the OPRR and FDA proposed revision of the 1981 expedited review list that was published on November 10, 1997 (62 FR 60607) overwhelmingly supported the proposed revision of the list. Three commenters suggested that there should be no expedited review available at all. OPRR and FDA disagree with these three comments and believe that expedited review is an appropriate part of the IRB review process. In addition, a deletion of the expedited review process would require a regulatory change to Section 110 which is beyond the scope of this revision. Several commenters suggested changing the exemptions found at Section 101(b), a topic also outside the scope of this revision.

[1] The following agencies have adopted the Common Rule: Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Consumer Product Safety Commission, International Development Cooperation Agency-Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Defense, Department of Health and Human Services, Department of Education, Department of Veterans Affairs, Environmental Protection Agency, National Science Foundation, Department of Transportation, Central Intelligence Agency, Social Security Administration.

The following discussion summarizes the 108 comments received and the resulting changes. In response to over forty comments, the introductory paragraph to the 1981 list has been reformatted into five general principles. The parenthetical in the introductory sentence in the 1981 list ''(carried out through standard methods)'' has been deleted in response to comments that this phrase served no particular purpose.

The reformatted general principles are set forth in paragraphs (A) through (F). Paragraph (C) makes it clear that the IRB must consider, for all categories, whether identification of the subjects or their responses would reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, insurability, reputation, or be stigmatizing unless reasonable and appropriate protections will be implemented so that risks related to invasion of privacy and breach of confidentiality are no greater than minimal. OPRR does not consider this to be a new or additional consideration. These concerns have always been an implicit part of the determination of whether an activity is a minimal risk activity. The words ''insurability'' and ''be stigmatizing'' have been added and are designed to serve as an aid to IRBs when genetic research is presented for review in an expedited review procedure. These changes were made in response to concerns raised in several comments that genetic testing may have consequences beyond those normally considered by the IRB.

Consistent with two comments, paragraph (D) prohibits expedited review for classified research involving human subjects. This is also in accordance with a March 27, 1997 Presidential Memorandum which proposed the elimination of an expedited review procedure for all classified research involving human subjects.

Paragraph (E) serves as a reminder to IRBs that informed consent and expedited review are two totally separate issues. This responds to concerns that allowing an increase in the scope of research eligible for expedited review would result in more waivers of informed consent. Research reviewed pursuant to an expedited review procedure is not necessarily eligible for waiver or alteration of informed consent. All research, whether reviewed by the full IRB or by way of expedited review, must conform to the applicable requirements for obtaining and documenting prospective informed consent, unless the research meets the conditions for waiving, excepting, or otherwise altering the informed consent requirements that are set forth in 45 CFR 46.116 and 117, 21 CFR 50.23 and 24, or 21 CFR 56.109(c).

Category one (1) preserves category ten (10) on the 1981 list. It also contains a new sentence that addresses the availability of the expedited review procedure for marketed drugs in research as well as specific citations in response to five comments that raised questions about these issues.

The following changes have been made to category two (2) in response to over 45 comments which supported enhanced expedited review concerning collection of blood, but which suggested certain refinements. Collection of blood now includes finger stick, heel stick, or ear stick as well as venipuncture. The four proposed subcategories were recombined as two separate subcategories. The critical issues to be considered by the IRB include weight, physical condition, and amount of blood to be collected. The first subcategory (a) concerns healthy nonpregnant adults. The second subcategory, (b), concerns all other adults and children. For this second subcategory, the IRB will need to make certain judgments including: consideration for the age, weight, and health of the subjects in light of the amount of blood to be collected, the frequency with which it will be collected, and the collection procedure. The final sentence of subcategory (b) reads: For these individuals, the amount drawn may not exceed the lesser of 50 ml or 3 ml per kg in an 8 week period and collection may not occur more than 2 times per week. While an expedited review of research involving pregnant women is permissible under the revised section, this last sentence makes it clear that the amount of blood that can be drawn is subject to limitations greater than those on healthy nonpregnant adults. Also, in response to public comment, the phrase ''medically vulnerable adults'' that was proposed in November 1997 has been deleted.

In response to more than 24 comments, category three (3) (previously category one (1) in the 1981 list) has been changed in the following manner. The words ''noninvasive means'' have been added to clarify the manner of collection of research materials; and, the procedures outlined are set out as examples to the IRB of the types of procedures that could fall within this category.

Categories four (4) and five (5) on the proposed list have been combined into one new category five (5) on the 1998 list. This new section is added in response to comments that raised questions about the relationship of proposed categories four (4) and five (5) to exempt research and about separating out existing and prospectively collected materials. The term ''nonresearch purposes'' was maintained in new category five (5) to describe the origins of the research materials. An explanatory note has been added to categories five (5) and seven (7) to clarify that some research described in these categories may be exempt from IRB review under 45 CFR 46.101(b) of the HHS regulations for the protection of human subjects (there is no comparable exemption provision in the FDA regulations). Thus, the listing of those categories refers only to nonexempt research.

Category six (6), proposed in November 1997, is now category four (4) on the 1998 list and addresses the collection of data through noninvasive procedures. The words ''noninvasive procedures'' have been added and apply to all procedures that would fall within this category. Because of several comments that raised concerns about MRIs and the use of anesthesia and sedation, expedited review would not be allowed for any procedure employing either of these. In response to more than 24 comments, this category lists procedures as examples for the IRB of the types of procedures that would qualify for expedited review.

Category seven (7) on the list proposed in November 1997 is now category six (6) on the 1998 list and deals with the collection of data from voice, digital, or image recordings. The qualification that was proposed in November of 1998 requiring consideration of certain risks to subjects is now a general guiding principle. It has been incorporated into the general Applicability section in response to several comments that questioned limiting this consideration to this type of research.

Category eight (8) on the proposed list is now category seven (7) on the revised list. In response to over 30 comments, the following changes have been made. The word ''stress'' has been deleted; the subsections in the proposed list have been combined; research on oral history has been included in response to approximately six comments; and specific research and research techniques have been noted. As in new category six (6), the qualification that requires consideration of certain kinds of risks to subjects has been deleted as it is now a general guiding principle for the entire list.

Category nine (9) on the proposed list received more than 50 comments

explicitly applauding this additional category. It has been divided into two categories. Category eight (8) identifies three situations in which research that is greater than minimal risk and has been initially reviewed by the convened IRB, could undergo subsequent continuing review by the expedited review procedure. New category nine (9) concerns continuing review of research that is not greater than minimal risk but had to undergo initial review by a convened IRB because it did not meet the criteria of categories two (2) through seven (7) on the list.

Certain other minimal changes have been made for editorial purposes or to clarify certain words that were used in the proposed list. Accordingly, the list of categories of research which may be reviewed by the IRB through the expedited review procedure is amended as set forth below.

Categories of Research That May Be Reviewed by the Institutional Review Board (IRB) Through an Expedited Review Procedure [1]

Applicability

(A) Research activities that (1) present no more than minimal risk to human subjects, and (2) involve only procedures listed in one or more of the following categories, may be reviewed by the IRB through the expedited review procedure authorized by 45 CFR 46.110 and 21 CFR 56.110. The activities listed should not be deemed to be of minimal risk simply because they are included on this list. Inclusion on this list merely means that the activity is eligible for review through the expedited review procedure when the specific circumstances of the proposed research involve no more than minimal risk to human subjects.

(B) The categories in this list apply regardless of the age of subjects, except as noted.

(C) The expedited review procedure may not be used where identification of the subjects and/or their responses would reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, insurability, reputation, or be stigmatizing, unless reasonable and appropriate protections will be implemented so that risks related to invasion of privacy and breach of confidentiality are no greater than minimal.

(D) The expedited review procedure may not be used for classified research involving human subjects.

(E) IRBs are reminded that the standard requirements for informed consent (or its waiver, alteration, or exception) apply regardless of the type of review—expedited or convened—utilized by the IRB.

(F) Categories one (1) through seven (7) pertain to both initial and continuing IRB review.

Research Categories

(1) Clinical studies of drugs and medical devices only when condition (a) or (b) is met.

(a) Research on drugs for which an investigational new drug application (21 CFR Part 312) is not required. (Note: Research on marketed drugs that significantly increases the risks or decreases the acceptability of the risks associated with the use of the product is not eligible for expedited review.)

(b) Research on medical devices for which (i) an investigational device exemption application (21 CFR Part 812) is not required; or (ii) the medical device is cleared/approved for marketing and the medical device is being used in accordance with its cleared/approved labeling.

(2) Collection of blood samples by finger stick, heel stick, ear stick, or venipuncture as follows:

(a) from healthy, nonpregnant adults who weigh at least 110 pounds. For these subjects, the amounts drawn may not exceed 550 ml in an 8 week period and collection may not occur more frequently than 2 times per week; or (b) from other adults and children,[2] considering the age, weight, and health of the subjects, the collection procedure, the amount of blood to be collected, and the frequency with which it will be collected. For these subjects, the amount drawn may not exceed the lesser of 50 ml or 3 ml per kg in an 8 week period and collection may not occur more frequently than 2 times per week.

(3) Prospective collection of biological specimens for research purposes by noninvasive means.

Examples: (a) Hair and nail clippings in a nondisfiguring manner; (b) deciduous teeth at time of exfoliation or if routine patient care indicates a need for extraction; (c) permanent teeth if routine patient care indicates a need for extraction; (d) excreta and external secretions (including sweat); (e) uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue; (f) placenta removed at delivery; (g) amniotic fluid obtained at the time of rupture of the membrane prior to or during labor; (h) supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques; (i) mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings; (j) sputum collected after saline mist nebulization.

(4) Collection of data through noninvasive procedures (not involving general anesthesia or sedation) routinely employed in clinical practice, excluding procedures involving x-rays or microwaves. Where medical devices are employed, they must be cleared/approved for marketing. (Studies intended to evaluate the safety and effectiveness of the medical device are not generally eligible for expedited review, including studies of cleared medical devices for new indications.)

Examples: (a) Physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy; (b) weighing or testing sensory acuity; (c) magnetic resonance imaging; (d) electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, ultrasound, diagnostic infrared imaging, doppler blood flow, and echocardiography; (e) moderate exercise, muscular strength testing, body composition assessment, and flexibility testing where appropriate given the age, weight, and health of the individual.

(5) Research involving materials (data, documents, records, or specimens) that have been collected or will be collected solely for nonresearch purposes (such as medical treatment or diagnosis). (Note: Some research in this category may be exempt from the HHS regulations for the protection of human subjects. *45 CFR 46.101(b)(4).* This listing refers only to research that is not exempt.)

(6) Collection of data from voice, video, digital, or image recordings made for research purposes.

(7) Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social

[1] An expedited review procedure consists of a review of research involving human subjects by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB in accordance with the requirements set forth in 45 CFR 46.110.

[2] Children are defined in the HHS regulations as ''persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.'' 45 CFR 46.402(a).

behavior) or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies. (Note: Some research in this category may be exempt from the HHS regulations for the protection of human subjects *45 CFR 46.101 (b)(2) and (b)(3).* This listing refers only to research that is not exempt.)

(8) Continuing review of research previously approved by the convened IRB as follows:

(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or

(b) Where no subjects have been enrolled and no additional risks have been identified; or

(c) Where the remaining research activities are limited to data analysis.

(9) Continuing review of research, not conducted under an investigational new drug application or investigational device exemption where categories two (2) through eight (8) do not apply but the IRB has determined and documented at a convened meeting that the research involves no greater than minimal risk and no additional risks have been identified.

Gary B. Ellis,

Director, Office for Protection from Research Risks.

[FR Doc. 98–29749 Filed 11–6–98; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3918–N–16]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of a Computer Matching Program—HUD and the Internal Revenue Service (IRS).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management (OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Internal Revenue Service (IRS). Under the terms of the agreement IRS agrees to disclose to HUD taxpayer mailing addresses as authorized by the Commissioner or her delegate pursuant to Section 6103(m)(2) of the Internal Revenue Code (IRC) for use in locating individuals to collect or compromise Federal claims in accordance with 31 United States Code (U.S.C.) 3711, 3717 and 3718. This program is called the Taxpayer Address Request Program (TAR). It was established by the IRS to facilitate the retrieval of taxpayer mailing addresses from the individual Master File on a volume basis. The volume of addresses and the method in which the IRS maintains the information make computer matching the most feasible method of extracting the data for disclosure to other agencies. Using the TAR computer matching program, current addresses can be obtained from the IRS within a one-week period, thereby avoiding the expenditure of substantial Federal resources in the manual execution of a matching process or investigations by a large workforce to ascertain the current address of individuals against whom the agency has a claim or indebtedness.

DATES: *Effective date*: Computer matching is expected to begin 40 days after publication of this notice in the **Federal Register** (December 21, 1998), unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

COMMENTS DUE BY: December 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–2374 or FAX (202) 708–3577. (These are not toll-free numbers.)

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: M.R. Taylor, Internal Revenue Service, Office of FedState Relations, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone number (202) 622–5145 or Fax (202) 622–3041. (These are not toll-free numbers.)

Reporting

In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget (OMB), Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority

The matching program will be conducted under the authority of section 6103(m)(2) of the Internal Revenue Code and 31 United States Code 3711, 3717 and 3718.

Objectives to be Met by the Matching Program

HUD expects that this computer matching program will enable it to quickly and effectively identify and locate individual debtors, and to obtain current mailing addresses of defaulted debtors.

Records to be Matched

HUD will utilize its system of records entitled, Accounting Records, HUD/Dept-2. HUD will submit approximately 40,000 records annually of individuals with outstanding Federal debts for matching purposes. These records are extracted from the Privacy Act system of records, HUD/Dept-2, Accounting Records, maintained in the following programs and automated systems: (1) Title I—Debt Management Collection Systems; (2) Section 312—Loan Mortgage System; and (3) Departmental Claims—Delinquent Debt Control System. The IRS will extract taxpayer address information from Privacy Act System of Records: Individual Master File, Treas/IRS 24.030, maintained at the Martinsburg Computing Center, Martinsburg, WV. This file contains approximately 20 million records of taxpayers who have filed U.S. Individual Income Tax returns.

Notice Procedures

The IRS provides direct notice to taxpayers in the instructions to Form 1040, 1040A, and 1040EZ that information provided on U.S. Individual Income Tax Returns may be given to other Federal agencies, as provided by law. HUD agrees to ensure that each applicant, at the time of application, receives written notice that the information provided on the application is subject to verification through computer matching with other Federal agencies for the purpose of locating delinquent debtors. Direct notice consists of appropriate language printed on its application forms or a separate handout provided to the individual.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures.

Period of the Match

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 40 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which will result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: October 29, 1998.

Leslie H. Graham, Jr.,

Deputy Director, Office of Information Technology.

[FR Doc. 98–29983 Filed 11–6–98; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Nuevo Energy Company/Torch Operating Company Habitat Conservation Plan, Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Nuevo Energy Company (Nuevo) and Torch Operating Company (Torch) have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The proposed permit would authorize the incidental take of 5 listed animal species and the future incidental take, should it become necessary, of 4 listed plant species, 9 unlisted animal species, and 7 unlisted plant species, resulting from oil and gas production in Kern County, California. The permit would be in effect for 30 years.

The Service also announces the availability of an Environmental Assessment for the incidental take permit application. The application includes the proposed Habitat Conservation Plan (Plan) fully describing the proposed project and mitigation and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application and Environmental Assessment should be received on or before December 9, 1998.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment, Habitat Conservation Plan, and Implementing Agreement should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340. Individuals wishing copies of the application or Environmental Assessment for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Jones or Peter Cross, Sacramento Fish and Wildlife Office, (916) 979–2728.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of fish and wildlife species listed as endangered or threatened, respectively. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, the Service may, under limited circumstances, issue permits to take listed fish and wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Section 9 of the Endangered Species Act generally does not prohibit take of federally listed plants on private lands unless the take or action resulting in take would violate State law. Nuevo/Torch have requested a permit for plants to the extent that their take would be a violation of the Endangered Species Act. Impacts to listed plants also must be addressed in the intra-Service consultation required pursuant to section 7(a) of the Endangered Species Act.

Background

The Plan addresses parcels totaling approximately 21,800 acres in western Kern County to which Nuevo/Torch holds various rights. The Plan does not address Nuevo/Torch mineral interests on Bureau of Land Management land. While the Plan Area covered by the Nuevo/Torch Plan is 21,800 acres, Nuevo/Torch estimates that only about 1,700 acres will be subject to permanent disturbance. The proposed activities addressed by the Plan include oil and gas production operations; construction, maintenance and/or abandonment of oil field equipment; maintenance and inspection of oil field equipment as required by certain regulatory agencies; and any activity required to mitigate an emergency situation, or effects of an emergency situation.

The listed species addressed in the proposed permit are the giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), blunt-nosed leopard lizard (*Gambelia silus*), San Joaquin kit fox (*Vulpes macrotis mutica*), and the California condor (*Gymnogyps californianus*), federally listed as endangered. The proposed permit also would authorize future incidental take of the San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), western burrowing owl (*Athene cunicularia hypugea*), San Joaquin LeConte's thrasher (*Toxostoma lecontei macmillanorum*), mountain plover (*Charadrius montanus*), California horned lizard (*Phynosoma coronatum frontale*), San Joaquin coachwhip

(*Masticophis flagellum ruddocki*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), and San Joaquin pocket mouse (*Perognathus inornatus inornatus*), currently unlisted species, should any of them become listed under the Endangered Species Act in the future while the permit is in effect. Nuevo/Torch has not requested authority under the Endangered Species Act for direct take of California condor. Rather, the applicants have requested that authority be given for minimal harassment of California condors that may inadvertently result if condors ever occur in the Plan Area.

Additionally, the Plan addresses avoidance, minimization, and mitigation for impacts to listed and unlisted plant species. These species are the Kern mallow (*Eremalche kernensis*), San Joaquin woolly-threads (*Lembertia congdonii*), and Bakersfield cactus (*Opuntia basilaris treleasei*), federally listed as endangered, and Hoover's eriastrum (*Eriastrum hooveri*), federally listed as threatened. The unlisted plant species are the recurved larkspur (*Delphinium recurvatum*), slough thistle (*Cirsium crassicaule*), oil neststraw (*Stylocline citroleum*), heartscale (*Atriplex cordulata*), Lost Hills crownscale (*Atriplex vallicola*), lesser saltscale (*Atriplex minuscula*), and brittlescale (*Atriplex depressa*). Collectively the listed and unlisted animal and plant species addressed in the Plan are referred to as the ''covered species'' for the Nuevo/Torch lands.

The Nuevo/Torch Plan is a three-fold program which includes: (1) Compensation, (2) avoidance and minimization of take, and (3) management of conservation lands. The compensation strategy for take resulting from the permanent disturbance of habitat is based on dividing Nuevo/Torch lands into four zones by a combination of habitat quality and land use. These zones are the Oil Zone, White Zone, Green Zone, and Red Zone, and are based on conservation value. The Oil Zone includes land within the administrative oil and gas field boundaries used by the California Division of Oil, Gas and Geothermal Resources. Within the Oil Zone, there is an inner area, known as the Oil Zone-Productive Area, where the currently producing wells are located and, because of the high intensity of production, where habitat value is generally low. That part of the Oil Zone which is outside the Oil Zone-Productive Area is known as the Oil Zone-Step-out Area. The Oil Zone-Step-out Area, where future oil development may occur, has much more limited current development and generally higher habitat value than the Oil Zone-Productive Area. The White Zone includes agricultural land and other areas with low habitat value; the Green Zone includes land with moderate habitat value that provides valuable linkage and corridor routes; and the Red Zone includes land with high habitat value.

While the habitat value of some Oil Zone land is such that it could be classified as Green or Red Zone land, the Oil Zone designation overrides the habitat value of the land, and the land is considered Oil Zone land for purposes of the Nuevo/Torch Plan. Most of the proposed activities covered by the Nuevo/Torch Plan are anticipated to take place in the Oil Zone-Productive Area. No compensation will be provided for permanent disturbance in the Oil Zone-Productive Area. Compensation for permanent disturbance in the Oil Zone-Step-out Area will be provided at the same rate as for White Zone land.

Nuevo/Torch will compensate for permanent habitat disturbance within the White, Green, and Red Zones by preserving high habitat value Red Zone land in the Lokern Natural Area in perpetuity. Funds will be set aside for initial improvements and long term care of preserve lands as the land is set aside to compensate for specific projects. For lands outside the Oil Zone, the Nuevo/Torch Plan assigns ''conservation credits'' for each acre of land disturbed and each acre acquired for preservation, based on the zone in which it is located. Lands in the Red Zone are valued at 3 credits/acre, lands in the Green Zone are valued at 2 credits/acre, and lands in the White Zone and the Oil Zone-Step-out Area are valued at 1 credit/acre. Compensation will be provided in a ratio of 3 acres of preserved land to every 1 acre of disturbed land. For example, if one acre of Red Zone land is permanently disturbed, then 3 acres of Red Zone land will be preserved in perpetuity as compensation. If 1 acre of White Zone land is permanently disturbed, then one third of an acre of Red Zone land will be preserved in perpetuity as compensation.

Nuevo/Torch estimates that 1,700 acres of habitat will be permanently disturbed, and that 81 percent of that disturbance will be in the Oil Zone-Productive Area. The remaining 29 percent of the disturbance will affect 493 acres, and be compensated for with a total of 833 Red Zone acres.

Nuevo/Torch will designate properties in the Lokern Natural Area as a preserve for use as compensation for permanent habitat disturbance. Three properties controlled by Nuevo/Torch in the Red Zone, the Mallett, Kimble, and Ransower-Vitelle properties, total 839.9 acres and would be set aside as preservation land as projects occur that require compensation. Nuevo/Torch will manage all three properties as preserve land upon initiation of the Nuevo/Torch Plan.

Nuevo/Torch will implement extensive avoidance and minimization measures which address both animal and plant species in all zones except the Oil Zone. Strict avoidance measures for covered species will be enforced by the Nuevo/Torch Environmental Department. Specific take avoidance measures are presented in Section 5 of the Nuevo/Torch Plan. Nuevo/Torch also will follow the Best Management Practices outlined in Section 5 in order to minimize effects on wildlife. In addition, Nuevo/Torch will conduct annual monitoring of both disturbed land and preservation land and provide reports to the Service and the California Department of Fish and Game.

Environmental Assessment

The Environmental Assessment considers the environmental consequences of five alternatives. Alternative 1, the proposed action, consists of the issuance of an incidental take permit to Nuevo/Torch, and implementation of the Plan and its Implementing Agreement. Alternative 2 consists of development of oil and gas facilities on the proposed preserve lands in the Lokern Natural Area. The level of incidental take under Alternative 2 would likely be greater than under the proposed action. Alternative 3 consists of development of oil production facilities on an alternative site which would have listed species concerns similar to the proposed action. Because of the presence of listed species on the lands associated with alternatives 2 and 3, an incidental take permit would be required for selection and implementation of either alternative. Alternative 4 consists of waiting until the Kern County Valley Floor Habitat Conservation Plan is approved. Under Alternative 5, the No Action Alternative, the Service would not issue an incidental take permit.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be

issued for the incidental take of the listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: November 3, 1998.

Michael J. Spear,

Manager, California/Nevada Operations Office, Fish and Wildlife Service, Region 1, Sacramento, California.

[FR Doc. 98–29902 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–4, ''Employee Assistance Program Records.'' The revisions will update the address of the System Manager(s).

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12201 Sunrise Valley Drive, Reston, Va 20192. Comments received within 40 days of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia, 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Employee/Labor Management Relations, Office of Personnel, U.S. Geological Survey, National Center, MS–601, Reston, Virginia, 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–4, ''Employee Assistance Program Records,'' to more accurately and clearly describe the address of the System Manager(s). The revision reflects a change of address in the Reston, Virginia, and the Atlanta, Georgia, System Managers locations.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Employee Assistance Program Records,'' USGS–4 in its entirety to read as follows:

INTERIOR/USGS–4

SYSTEM NAME:

Employee Assistance Program—Records, USGS–4.

SYSTEM LOCATION:

This system of records is located with the contractor providing counseling services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Geological Survey employees and their families who seek, are referred, and/or receive assistance through the Employee Assistance Program (EAP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, State, local government, or private), the problem assessment, the recommended plan of action to correct the major issue, referral to community or private resource for assistance with personal problems, referral to community or private resource for rehabilitation or treatment, results of referral, and other notes or records of discussions held with the employee made by the EAP counselor. Additionally, records in this system may include documentation of treatment by a therapist or at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1; 42 U.S.C. 290ee–1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by the Employee Assistance Program Counselor to document the nature of an individual's problem and progress made to correct the problem. The primary uses of these records are: (1) For the EAP counselor to document the nature of individual's problem and progress made to correct the problem, and, (2) record an individual's participation in and the results of community or private referrals for solution of problems, rehabilitation, or treatment programs. These records and information may be used to disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by the Department of the Interior all patient identifying information will be removed).

Note: Disclosure of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR part 2. Disclosure of records pertaining to the physical and mental fitness of employees are, as a matter of Department policy, afforded the same degree of confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets with access strictly limited to those persons employed by the contractor(s) who are directly involved in the alcohol and drug abuse prevention function of the U.S. Geological Survey's Employee Assistance Program as that term is defined in 42 CFR, part 2.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 405–04 a and b.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Employee/Labor Management Relations, Office of Personnel, U.S. Geological Survey, 601 National Center, Reston, Virginia 20192; Atlanta Personnel Officer, U.S. Geological Survey, 3850 Holcomb Bridge Rd., Norcross, Georgia 30092;

Rolla Personnel Officer, U.S. Geological Survey, 1400 Independence Road, Rolla, Missouri 65401; Chief, Employee Relations Section, Central Region Personnel Branch, U.S. Geological Survey, Denver Federal Center, Denver, Colorado 80225; Western Region EAP Administrator, Employee Relations and Development Section, Western Region Personnel Branch, 345 Middlefield Road, Menlo Park, California 94025.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager. Individuals must furnish their name and date of birth for their records to be located and identified.

RECORD ACCESS PROCEDURES:

Same as notification above. Any individual must also follow the Department's Privacy Act Regulations regarding verification of identity and access to records (see 43 CFR 2.62).

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the appropriate System Manager. An individual must follow the Department's Privacy Act Regulations regarding and identity and amendment of records (see 43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, the Employer Assistance Program staff who records the counseling session, and the therapists or institutions used as referrals or providing treatment.

[FR Doc. 98–29904 Filed 11–6–98; 8:45 am]
BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–5, ''Contract Files.'' The revisions will update addresses of the System Location and the System Manager.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12201 Sunrise Valley Drive, Reston, VA 20192. Comments received within 10 days of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia, 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Acquisition & Federal Assistance, U.S. Geological Survey, National Center, MS–205, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–5, ''Contract Files,'' to more accurately and clearly describe the addresses of the System Location and the System Manager.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Contract Files,'' USGS–5 in its entirety to read as follows:

INTERIOR/USGS–5

SYSTEM NAME:

Contract Files—Interior, USGS–5.

SYSTEM LOCATION:

The primary location of this system of records is in the Office of Acquisition & Federal Assistance, U.S. Geological Survey, National Center, MS–205, Reston, VA 20192. These records are also maintained in several Survey administrative field offices. A listing of these locations may be obtained from the Systems Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contracts or subcontracts with the Geological Survey and certain contractor employees. The system also contains records concerning individuals in their entrepreneurial capacity, corporations and other business entities. These records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of contract information, from inception of requirement, through contract award, contract administration and completion of the contract. Copies of contractor technical and cost proposals, including individual employee resumés and salary data, documentation pertaining to the award, contract administration, miscellaneous correspondence, and information on debts owed by a contractor as a result of overpayment, default, disallowed costs or other contractual obligation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 481.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary use of the records is in awarding and administering contracts through their completion. Disclosure outside the Department of the Interior may be made to: (1) The U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (5) Federal, State or local agencies

where necessary to obtain information relevant to the hiring or retention of an employee; or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be able to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

By name of individual contractor and by contract number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 802–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Acquisition & Federal Assistance, U.S. Geological Survey, National Center, MS–205, Reston, Virginia 20192.

NOTIFICATION PROCEDURE:

A written and signed request stating that the requester seeks information concerning records pertaining to him/her must be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access shall be addressed to the System Manager, signed by the requester and meet the content requirement of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information comes from the individual contractor.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–29905 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–7, ''Personal Property Accountability Records.'' The revisions will update addresses of the System Location and the System Manager.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12202 Sunrise Valley Drive, Reston, VA 20192. Comments received within two days of publication in the **Fedeal Register** (December 21, 1998) will be considered. They system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to U.S. Department of Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT:

Chief, Office of Program Support, U.S. Geological Survey, National Center, MS–210, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–7, ''Personal Property Accountability Records,'' to more accurately and clearly describe the addresses of the System Location and the System Manager.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Personal Property Accountability Records,'' USGS–7 in its entirety to read as follows:

INTERIOR/USGS–7

SYSTEM NAME:

Personal Property Accountability Records—Interior, USGS–7.

SYSTEM LOCATION:

(1) Property Management Branch, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, MS–210, Reston, VA 20192.

(2) Administrative offices in all or substantially all field locations. (For a listing of specific locations, contact the System Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Geological Survey employees who are accountable for bureau-owned controlled property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of assignment of an internal identification number and acknowledgment of receipt by employees. Records of transfers to other accountable employees. Inventory records containing employee social security numbers and duty stations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Maintain control over bureau-owned controlled property; (b) maintain up-to-date inventory of the property and to record accountability for the property. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or

foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (6) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset and to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are both manual and computerized.

RETRIEVABILITY:

By employee social security number.

SAFEGUARDS:

Access by authorized employees only.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 307–10.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property Management Branch, Office of Facilities and Management Services, Office of Program Support, U.S. Geological Survey, National Center, Mail Stop 210, Reston, VA 20192.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual employees.

[FR Doc. 98–29906 Filed 11–6–98; 8:45 am]
BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–11, ''Security.'' The revisions will update addresses of the System Location and the System Manager.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12201 Sunrise Valley Drive, Reston, Va. 20192. Comments received within two days of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESS: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Administrative Officer, Geologic Division, U.S. Geological Survey, National Center, MS–912, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–11, ''Security,'' to more accurately and clearly describe the addresses of the System Location and the System Manager.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Security,'' USGS–11 in its entirety to read as follows:

INTERIOR/USGS–11

SYSTEM NAME:

Security—Interior, USGS–11.

SYSTEM LOCATION:

Office of the Chief Geologist, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, VA 20192.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Geologic Division employees who have been granted security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of security clearance for Division personnel; contains name, title, organization, office location, social security number, place and date of birth, and type of security clearance of person being granted access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10501.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to keep current records on security clearances in the Geologic Division. Disclosure outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a

violation or potential violation of civil or criminal law or regulation; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee; or issuance of a security clearance, license, contract, grant, or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual systems maintained in locked files. Automated system maintained in dBase III file.

RETRIEVABILITY:

Indexed by individual name.

SAFEGUARDS:

Maintained with security meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/System 306–16.

SYSTEM MANAGERS(S) AND ADDRESS:

Administrative Officer, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, VA 20192.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

[FR Doc. 98–29907 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of record.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intention to modify an existing Privacy Act system of records notice USGS-13, ''Manuscript Processing.'' The revisions will update the address of the System Location(s), System Manager(s), and further define Retention and Disposal.

EFFECTIVE DATE: 5 U.S.C. 552a(3)(11) that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A-130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center MS-807, 12201 Sunset Valley Drive, Reston, Va 20192. Comments received within 40 days of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESS: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS-807, Reston, Virginia, 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Eastern Publications Group, Geological Survey, National Center, MS-903, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS-13, ''Manuscript Processing,'' to more accurately and clearly describe the addresses of the System Location(s), System Manager(s). The revision reflects a change of address in the Reston, Virginia, Denver, Colorado; and Menlo Park, California, System Locations and Systems Managers locations. In addition, this revision further define the Retention and Disposal of records procedures.

Dated: October 28. 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Manuscript Processing,'' USGS-13 in its entirety to read as follows:

INTERIOR/USGS–13

SYSTEM NAME:

Manuscript Processing-Interior, GS–13.

SYSTEM LOCATION:

(1) Eastern Publications Group, Office of the Eastern Regional Geologist, Geologic Division, Reston, VA; (2) Central Publications Group, Office of the Central Regional Geologist, Geologic Division, Denver CO; (3) Western Publications Group, Office of the Western Regional Geologist, Geologic Division, Menlo Park, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Geologic Division authors of Geo-Science publications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains record by author or title on publication plans, status and location of all manuscript maps and reports in preparation or published by Geologic Division employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 31, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to maintain knowledge of and track publication plans, status of manuscript maps and reports in preparation being entered by Geologic Division employees. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary for its hiring or retention of an

employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form on cards.

RETRIEVABILITY:

Indexed by author and Geographic area.

SAFEGUARDS:

Maintained in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 303–03a.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief, Eastern Publications Group, Geologic Division, National Center, MS–903, Reston, VA 20192; (2) Chief, Central Publications Group, MS902, Geologic Division, Denver, CO 80225; (3) Chief, Western Publications Group, Geologic Division, MS 951, Menlo Park, CA 94025.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Same as above. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Authors.

[FR Doc. 98–29908 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–15, ''Earth Science Information Customer Records.'' The revisions will update addresses of the System Location and the System Manager.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12201 Sunrise Valley Drive, Reston, Va. 20192. Comments received within two day of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia, 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Senior Program Advisor, Data Information Delivery Office, U.S. Geological Survey, National Center, MS–508, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–15, ''Earth Science Information Customer Records,'' to more accurately and clearly describe the addresses of the System Location and the System Manager.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Earth Science Information Customer Records,'' USGS–15 in its entirety to read as follows:

INTERIOR/USGS–15

SYSTEM NAME:

Earth Science Information Customer Records—Interior, USGS–15.

SYSTEM LOCATION:

(1) Data and Information Delivery Office, National Mapping Division, U.S. Geological Survey, 508 National Center, MS–508, Reston, Virginia 20192. (2) Earth Science Information Centers (for specific locations contact the System Manager).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested Earth Science information directly from, or whose requests have been forwarded to the Earth Science Information Office or its sponsored field centers. The system also contains records concerning individuals in their entrepreneurial capacity, corporations, and other business entities whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address, credit card number and expiration date (as provided), customer's inquiry, response to inquiry, orders for products, appropriate accounting entries, and information on deposits with and debts owed the Bureau as a result of customer orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 3206; OMB Circular A–16; 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records if for reference by Geological Survey (GS) and GS contract employees in processing customer inquiries, orders, and complaints. Disclosure outside the Department of the Interior may be made to: (1) The U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders, correspondence may be recorded on microfilm and key information recorded on magnetic disk or on magnetic tape in some instances.

RETRIEVABILITY:

Stored by account number, indexed by name and zip code.

SAFEGUARDS:

Maintained in GS or GS contract areas occupied by GS or GS contract personnel during working hours with the building locked and/or guarded during off hours.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 1500–07.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Program Advisor, Data and Information Delivery Office, National Mapping Division, U.S. Geological Survey, National Center, MS–508, Reston, Virginia 20192.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Customers on whom record(s) are maintained and GS or GS contract information researchers.

[FR Doc. 98–29909 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–18, ''Computer Registration System.'' The revisions will update addresses of the System Location(s), add language to cover email to Categories of Individuals Covered by the System, to add a routine use authorizing data access, revising the addresses of System Manager(s), and altering the language for Notification Procedure, Record Access Procedure, and Contesting Record Procedure.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12201 Sunrise Valley Drive, Reston, Va. 20192. Comments received within two days of publication in the **Federal Register** (December 2, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESS: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia, 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Enterprise Data Services Branch, Office of Program Support, U.S. Geological Survey, National Center, MS–815, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–18, ''Computer Registration System,'' to more accurately and clearly describe the addresses of the System Location(s), System Manager(s), add email address where applicable, add a routine use authorizing data access and revise language on notification, access, and contesting procedures.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Computer Registration System,'' USGS–18 in its entirety to read as follows:

INTERIOR/USGS–18

SYSTEM NAME:

Computer Registration System—Interior, USGS–18.

SYSTEM LOCATION:

Enterprise Data Services Branch (EDSB), Office of Program Support, National Center, U.S. Geological Survey, Mail Stop 815, Reston, Virginia 20192; Menlo Park Service Center, 345 Middlefield Road, Menlo Park, California 94025; Flagstaff Service Center, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of computer services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, computer user number, E-mail address where applicable, telephone number, subsystem registration, account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 486(c); 41 CFR part 201–7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To record registration information for computer users; and (b) to contact computer users; and (c) to authorize data access. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or

foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) To a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; and (5) To Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk.

RETRIEVABILITY:

By user name, user number, E-mail address where applicable, telephone number, subsystem, account number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Enterprise Data Services Branch, Office of Program Support, U.S. Geological Survey, Mail Stop 815, National Center, Reston, Virginia 20192; Chief, Menlo Park Service Center, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025; Chief, Flagstaff Service Center, U.S. Geological Survey, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual users of computer services.

[FR Doc. 98–29910 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, EGS–20, ''Photo File System.'' The revisions will update the addresses of the System Location and System Manager. In addition it will more clearly define Retention and Disposal.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12201 Sunrise Valley Drive, Reston, VA 20192. Comments received within 40 days of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Eastern Publications Group, Geologic Division, Eastern Region Geology, U.S. Geological Survey, National Center, MS–903, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for EGS–20, ''Photo File System'' to more accurately and clearly describe the addresses of the System Location, System Manager, and redefine the Retention and Diposal.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Photo File System,'' EGS–20, in its entirety to read as follows:

INTERIOR/EGS–20

SYSTEM NAME:

Photo File System—Interior, GS–20.

SYSTEM LOCATION:

U.S. Geological Survey, Geologic Division, Office of Scientific Publications, National Center, Mail Stop 790, Reston, VA 20192.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S.G.S. employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 3101, 43 U.S.C. 1467.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to maintain photographs of USGS top level employees.

Disclosure outside the Department of the Interior may be made: (1) To the public in presentation and publications; (2) to the U.S. Department of justice when related to litigation or anticipated litigations; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or licensee; (4) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

PIC cards 5 by 8.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Items.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Eastern Publications Group, Geologic Division, Eastern Region Geology, National Center, MS–903, Reston, VA 20192

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records shall be addressed to the System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Photographs of individuals employed by the U.S.G.S.

[FR Doc. 98–29911 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–23, ''Personnel Investigations Records.'' The revisions will update addresses of the System Location and the System Manager. There are two additions and minor language changes under Categories of Individuals Covered by the System. There is an addition to Authority for Maintenance of the System. There are minor language changes under Storage and Safeguards.

EFFECTIVE DATES: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12202 Sunrise Valley Drive, Reston, VA. 20192. Comments received within two days of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia, 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Security Officer, Office of Program Support, Office of Management Services, U.S. Geological Survey, National Center, Mail Stop 250, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–23, ''Personnel Investigation Records,'' to more accurately and clearly define the addresses of the System Location and the System Manager; to add some new groups of individuals in Categories, as well as update some of the language used in the descriptions; to more clearly define the Authorities; and to update the language in Storage and Safeguards.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate Information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Personnel Investigations Records,'' USGS–23 in its entirety to read as follows:

INTERIOR/USGS–23

SYSTEM NAME:

Personnel Investigations Records—Interior, USGS–23.

SYSTEM LOCATION:

Security Management Office, Office of Program Support, Office of Management Services, U.S. Geological Survey, National Center, Mail Stop 250, Reston, VA 20192.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current Geological Survey employees and contractors who (a) are granted access to classified information; (b) are filling public trust positions not requiring access to classified information; (c) are being considered either for access to classified information or for filling public trust positions not requiring access to classified information; and (d) are found unsuitable for access to classified information or filling public trust positions because unfavorable information was revealed during the conduct of their security investigations.
2. Former Geological Survey employees and contractors who (a) were granted access to classified information; (b) were filling public trust positions not requiring access to classified information; and (c) were found unsuitable for access to classified information or filling public trust positions because unfavorable information was revealed during the conduct of their security investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports and the qualifications of an individual for a specific position; reports of inquiries with or from law enforcement agencies, employers, and educational institutions attended; foreign affiliations which may affect his or her loyalty to the United States; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended, and Departmental manual 441, Personnel Security and Suitability Requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: (1) To designated officials, officers, and employees of the USGS, DOI, OPM, DOE, CIA, FBI, and all other agencies and departments of the Federal Government who in the performance of their duties have an interest in the individual for employment purposes, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States Government; (2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) To disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; and, (4) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All investigative records are maintained in file folders stored in file cabinets. An automated index system of all records is on a personal computer.

RETRIEVABILITY:

All records are indexed by surname in alphabetical order. The automated index system is indexed by surname or social security number.

SAFEGURDS:

The filing cabinets and the personal computer are safeguarded in a secure, windowless office with one doorway which is secured by a key locking device using an off-master key system. Access to all keys is under stringent security controls. The automated index system of all records is further protected by a password and privacy act warning.

RETENTION AND DISPOSAL:

(a) OPM investigative files are routinely destroyed within 90 days after receipt or upon completion of the adjudication action, whichever occurs last. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15b. (b) All information, supplementing the above OPM investigative files originated by the Geological Survey, is retained for five years following termination of awarded security clearance or employment, whichever occurs first, and is then destroyed. Disposition of files if made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15a.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer/Alternate Security Officer, Office of Program Support, Office of Management Services, U.S. Geological Survey, National Center, Mail Stop 250, Reston, VA 20192.

NOTIFICATION PROCEDURE:

Written inquires to the System Manager are required and must include the following information in order to positively identify the individual whose records are requested: (1) Full name, (2) Date of birth, (3) Place of birth, (4) Any available information regarding the type of record requested. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

An individual can obtain information on the procedures for gaining access to and contesting the records from the above System Manager. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Same as above. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the following categories of sources: (1) Applications and order personnel and security forms furnished by the individual, (2) Results of investigations and other material furnished by Federal agencies.

[FR Doc. 98–29912 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Geological Survey, Department of the interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the U.S. Geological Survey (USGS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–24, ''Employee Work Report Edit and Individual Employee Production Rates.'' The revisions will update addresses of the System Location and the System Manager. In addition, it adds, deletes, and revises language under several sections of the notice.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, 12202 Sunrise Valley, Drive, Reston, VA 20192. Comments received within two days of publication in the **Federal Register** (December 21, 1998), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to U.S. Department of the Interior, U.S. Geological Survey, USGS Privacy Act Officer, National Center, MS–807, Reston, Virginia, 20192. Hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Programs and Partnership Branch, Mapping Applications Center, National Mapping Division, U.S. Geological Survey, National Center, MS–558, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: The USGS is proposing to amend the system notice for USGS–24, ''Employee Work Report Edit and Individual Employee Production Rates,'' to more accurately and clearly describe the addresses of the System Location and the System Manager; to change the word Production to All in Categories of Individual in the System; to delete several words in Categories of Records in the System; to redefine the Storage media; and to more clearly define the procedures under Notification, Record Access, and Contesting Record Procedures.

Dated: October 28, 1998.

Paul R. Celluzzi,

Chief, Corporate information Technology Branch, Office of Information Services.

Accordingly, the USGS proposes to amend the ''Employee Work Report Edit and Individual Employee Production Rates,'' USGS–24 in its entirety to read as follows:

INTERIOR/USGS–24

SYSTEM NAME:

Employee Work Report Edit and Individual Employee Production Rates—Interior, USGS–24.

SYSTEM LOCATION:

1. Mapping Applications Center, National Mapping Division, U.S. Geological Survey, National Center, Mail Stop 558, Reston, Virginia 20192. 2. Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1400 Independence Road, Rolla, Missouri 65401. 3. Rocky Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225. 4. Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefield Road, Mail Stop 531, Menlo Park, California 94025.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees in Mapping Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number, and hours, by individual employees in each of the offices listed above, as well as Geological Survey professionals (geographers, cartographers, etc.) who conducted research and investigations for which results are published in Geological Survey reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 310, 3010; 43 U.S.C. 31, 1467.

ROUTINE USES FOR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for analysis of cost and production rates for individual employees and for units of National Mapping Division. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to the appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) To a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) To Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape and disc.

RETRIEVABILITY:

By name, employee ID.

SAFEGUARDS:

Access restricted to authorized persons only from locked storage.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule. RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

1. Chief, Programs and Partnerships Branch, Mapping Applications Center, National Mapping Division, U.S. Geological Survey, National Center, Mail Stop 558, Reston, Virginia 20192.

2. Chief, Branch of Program Management, Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1440 Independence Road, Rolla, Missouri 65401. 3. Chief, Branch of Program Management, Rock Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225. 4. Assistant Chief, Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefield Road, Mail Stop 531, Menlo Park, California 94025.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Data from work prepared by individual.

[FR Doc. 98–29913 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Revision of Form MMS–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: MMS has determined that Form MMS–2005, the lease document, needs revision due to changes in regulations since it was last reviewed in 1986. MMS has revised the form to reflect plain language and has rewritten it for clarity and organization. To reduce the need for future revisions to the document due to changes in regulations, MMS refers the Lessee to applicable laws, and rules and regulations of the Department. Much of the wording of existing Form MMS 2005 that specifically cites, incorporates by reference, or restates statutory and regulatory requirements is therefore deleted from the proposed revision.

DATES: MMS will accept comments on this document on or before December 24, 1998, and will schedule a workshop during the comment period.

ADDRESSES: Comments may be sent to Terry Holman, Minerals Management

Service, Mail Stop 4230, 1849 C Street, NW, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Lease Sale Document form MMS–2005, is the written contract between the U.S. Government and those wishing to lease the submerged lands of the Outer Continental Shelf for exploration, development and production of oil and natural gas resources. Section 1 explicitly states that the lease is subject to the Notice of Lease Sale, the Outer Continental Shelf Lands Act, and all applicable rules and regulations of the Secretary of the Interior and Executive Orders issued by the President. Provisions that restate regulations have been deleted from the document. A section-by-section description of the proposed changes is presented below.

Old form	New form
Top of the form above the double line	The statement concerning information collection has been revised to indicate that the form contains information collection requirements that have been approved by the Office of Management and Budget. Headings in the upper right are revised for clarity. The Net Profit Share heading is replaced with Other to accommodate the recording of a broader range of special terms that might pertain to a lease.
Section 1: Statutes and Regulations	This section was rewritten to clarify that the lease is subject to the OCS Lands Act, the Lease Sale Notice, and all applicable laws, rules, regulations, and Executive Orders issued by the President as of the date of the lease and in the future. The revised section contains a specific reference to the Notice of Sale which was not included in the previous version of the document. Since many sections have been removed from the lease document because the requirements exist in various regulations, this statement affirms that the lessee remains responsible for elements not expressly stated in the lease.
Section 2: Rights of Lessee	Retitled Rights Granted to the Lessee. Rewritten in plain language.
Section 3: Term	Rewritten in plain language.
Section 4: Rental	Four sections combined in one renumbered and retitled Section 7 Payment of Rent and Royalty. Provisions deleted because they are redundant of 43 USC 1337; 30 CFR part 206, subpart C, 30 CFR 202.100; and 30 CFR part 218, subparts B and D. Rewritten in plain language.
Section 5: Minimun Royalty	See note on section 4 above.
Section 6: Royalty on Production	See note on section 4 above.
Section 7: Payments	See note on section 4 above. Clarifies when payments are due and how value of production is calculated. We added additional language to make express the existing implied covenant to market production for the mutual benefit of the Lessee and the Lessor. We also added that delivery of resources taken in kind shall be made to a point designated by the Lessor.
Section 8: Bonds	Provision deleted because it is redundant of 30 CFR part 256, subpart I.
Section 9: Plans	Provision deleted because it is redundant of 30 CFR part 250, subpart B.
Section 10: Performance	Renumbered and retitled Section 8 Diligent Operations. Rewritten in plain language.
Section 11: Directional Drilling	Provision deleted because it is redundant of 30 CFR 256.71.
Section 12: Safety Requirements	Provision deleted because it is redundant of 30 CFR 250.120–122 22 and 43 U.S.C. 1347 and 1348.
Sectioni 13: Suspension and Cancellation	Provision deleted because it is redundant of 30 CFR 250.110, 250.112 and 43 U.S.C. 1334.
Section 14: Indemnification	Renumbered section 4. Rewritten in plain language. Clarifies that only successful appeal of an MMS order, not mere pursuit of an appeal, could exempt the lessee from liability for loss or damage to property or injury to persons resulting from compliance with the order.
Section 15: Disposition of Production	Provision deleted because it is redundant of 43 U.S.C. 1353 and 43 U.S.C. 1337.
Section 16: Unitization, Pooling, and Drilling Agreements	Provision deleted because it is redundant of 30 CFR part 250, subpart M.
Section 17: Equal Opportunity Clause	Provision deleted because it is redundant of 41 CFR 6–1.4(a) and Executive Order 11246.
Section 18: Certification of Nonsegregated Facilities	Effective September 18, 1997, the Labor Department amended its regulations and 41 CFR 60–1.8(b) has been deleted. (See rulemaking at 62 FR 44174 (Aug. 19, 1997). The amended 60–1.8 requires the contractor maintain a non-segregated workplace, but no longer relies on certification of the contractor.
Section 19: Reservations to Lessor	Renumbered section 6. Rewritten in plain language.
Section 20: Transfer of Lease	Provision deleted because it is redundant of 30 CFR part 256, subpart J and 43 U.S.C. 1334.
Section 21: Surrender of Lease	Provision deleted because it is redundant of 30 CFR part 256.76 and 43 U.S.C. 1334.

Old form	New form
Section 22: Removal of Property on Termination of Lease	Renumbered section 9. Rewritten to specify time for submission of a plan for well abandonment and platform removal (within 3 months of lease termination). Also would authorize lessor to take title to property not removed within the prescribed time.
Section 23: Remedies in Case of Default	Renumbered section 10 and retitled Remedies for Lessee Non-Compliance. Rewritten in plain language.
Section 24: Unlawful Interest	Provision deleted because it is redundant of 41 U.S.C. 22 and 18 U.S.C. 431–433.
	Section 5 Access to Records is a new section. It implements and clarifies the requirements of 30 CFR 207.5, 212.51 and 250.121 and implements section 103 of the Federal Oil and Gas Royalty Management Act. In particular, it would require disclosure to authorize representatives of the lessor of documents in the possession of ''affiliates,'' which have been found to be covered ''other persons'' under 30 CFR 212.51 in *Shell Oil Co.* v. *Babbitt*, 125 F.3d 172 (3rd Cir. 1997), affirming 945 F.Supp. 792, and *Santa Fe Mineral* v. *McCutcheon*, 90 F.3d 409 (10th Cir. 1996).

The revised form is included below:

Form MMS–2005 (1998)
(Supersedes MMS–2005 March 1986)

United States Department of the Interior
Minerals Management Service

Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

This form contains information collection requirements that have been approved by the Office of Management and Budget. These approvals are found at 30 CFR 210.10, and 30 CFR 250.100.

Office

Serial Number

Cash Bonus

Rent per acre of fraction thereof_____

Rent per hectare or fraction thereof_____

$

Minimum royalty rate per acre or fraction thereof_____

Minimum royalty rate per hectare or fraction thereof_____

Royalty Rate

Other

This lease contains approximately acres hectares (the ''leased area''), described as follows:

It is effective as of (the ''Effective Date'') and will continue for an initial period of years (the ''Initial Period'') by and between the United States of America (the ''Lessor''), by the Minerals Management Service (''MMS''), its authorized officer, and

(the ''Lessee''). In consideration of any payment made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the attached Stipulation(s) numbered , the Lessee and Lessor agree as follows:

Sec. 1. *Statutes and Regulations.* This lease is issued under the Outer Continental Shelf Lands Act 43 U.S.C. 1331 et seq., as amended (the ''Act''), and the Notice of Sale _____dated _____.

This lease is subject to the terms of that Notice, the Act, all applicable laws, and the rules and regulations of the Secretary of the Interior now or hereafter in effect, when not inconsistent with any express provision of this lease. This lease is also subject to all applicable Executive Orders issued by the President now or hereafter in effect.

Sec. 2. *Rights Granted to the Lessee.* The Lessor grants to the Lessee the exclusive right to explore for, develop, and produce oil and gas resources, except helium gas, in the submerged lands of the Outer Continental Shelf. This right is subject to the Lessor's approval of plans and permits required under the Act and regulations.

The Lessee also has the following rights:

(a) the nonexclusive right to conduct geological and geophysical explorations according to applicable regulations;

(b) the nonexclusive right to drill water wells, except wells in geopressured-geothermal and other geothermal reservoirs, and to use the water produced for operations under the Act free of cost. Drilling must be conducted according to procedures approved by the Lessor.

(c) the right to construct and maintain devices and structures necessary to the full exercise of rights under the lease, subject to compliance with applicable laws and regulations.

Sec. 3. *Term.* This lease will continue from the Effective Date of the lease for the Initial Period and as long as oil or gas is produced from the leased area in paying quantities, or drilling or well reworking operations (as approved by the Lessor) are conducted, or as otherwise extended under regulation.

Sec. 4. *Indemnification.* The Lessee must indemnify the Lessor for any claim, including claims for loss or damage to property or injury to persons resulting from any operation on the leased area conducted by or on behalf of the Lessee. However, the Lessee is not responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from:

(a) the Lessor's negligence, other than the commission or omission of a discretionary function or duty, or

(b) the Lessee's compliance with an order of the Lessor against which the Lessee filed an administrative appeal if the appeal is filed before the cause of action for the claim arose and if the Lessee prevails in the administrative appeal or subsequent action for judicial review.

Sec. 5. *Access to Records.* In accordance with regulations, if requested by the Lessor, the Lessee agrees to provide within a reasonable time to any authorized representative of the Department of the Interior all books, accounts, maps and any other records in the possession or under the control of the Lessee, its affiliates, or agents, that are relevant to operations, payments, disposition of the production, or any other activity occurring under this lease. The Lessee also agrees to keep these records open for inspection by any authorized representative at all reasonable times. This clause applies regardless of whether the records were prepared by or are under the control of the Lessee, or its affiliates, or agents. Information regarding disposition of the production includes, but is not limited to, all records regarding the sale or other disposition of oil or gas produced from the leased area by the Lessee or any of its affiliated or related entities.

Sec. 6. *Reservations to Lessor.* All rights in the leased area not expressly granted to the Lessee by the Act, the regulations, or this lease are reserved to the Lessor. Reserved rights include, but are not limited to:

(a) authorizing geological and geophysical exploration in the leased area which does not unreasonably interfere with or endanger actual operations under this lease;

(b) granting easements or rights-of-way;

(c) granting leases for any minerals other than oil and gas, provided that operations under such leases do not unreasonably interfere with or endanger operations under this lease; and

(d) suspending operations under this lease during war or national emergency as provided in section 12(c) or 12(d) of the Act. If the Lessor suspends operations or restricts activities under those sections of the Act, rent and royalty payments will be suspended and the term of this lease will be extended by adding the suspension period. The Lessor will pay the Lessee just compensation for such suspension as provided by the Act.

Section. 7. *Payment of Rent and Royalty.* The Lessee must pay the rent, minimum royalty, or royalty on the value of production saved, removed or sold at the rate specified on the face of this lease. The Lessor may require payment of the royalty in kind.

Payment must comply with applicable regulations and the following provisions:

(a) The Lessee must pay rent for each lease year which begins before determination of oil or gas in paying quantities in the leased area. Rent for the first year is due by the eleventh business day after receipt of this lease, and for subsequent years on or before the anniversary date of this lease.

(b) The Lessee must pay minimum royalty for each year which begins after a determination of oil or gas in paying quantities on the lease area is made by the Lessor. Minimum royalty is due by the day before the next anniversary of the lease. If production occurs, the Lessee must pay the greater of minimum royalty or royalty.

(c) The Lessor reserves authority to establish reasonable value of all production for royalty purposes. To establish the value of production, the Lessor may use dispositions by the Lessee, its affiliates, and others related to the Lessee, or the Lessor may use other considerations specified under applicable regulations.

(d) The Lessee must place production in marketable condition and market the production at no cost to the Lessor.

(e) The Lessee shall deliver royalty oil and gas resources taken in kind to a delivery point designated by the Lessor.

Sec. 8. *Diligent Operations.* The Lessee must properly and timely develop and produce this lease. Under normal conditions, the Lessee will explore and commence development within the primary term of this lease. After due notice in writing from the Lessor, the Lessee must drill such wells and produce at such rates consistent with sound operating principles as the Lessor may require.

Sec. 9. *Removal of Property on Termination of Lease.* In accordance with regulations, the Lessee must submit for approval a plan for well abandonment and platform decommissioning within three months after termination in whole or in part unless the Lessor approves a longer period. The Lessee must provide for the removal of all devices, works, and structures from the premises no longer subject to the lease, according to applicable regulations and orders of the Lessor. All abandonment and removal operations must be completed within one year after termination of this lease unless otherwise approved by the Lessor. Failure to comply will result in penalties under the regulations. The Lessor may take title to any property not removed within such time. With the written approval of the Lessor under a right of use and easement, the Lessee may continue to maintain devices, works, and structures on the leased area for drilling or producing on other leases or for other purposes.

Sec. 10. *Remedies for Less Non-Compliance.*

(a) Whenever the Lessee fails to comply with any provisions of the Act, the regulations issued under the Act, or the terms of this lease, the Lessor's remedies include, but are not limited to:

(1) Penalties under section 24 of the Act;

(2) Suspension or cancellation under Section 5 of the Act;

(3) Demands for payment or forfeiture of bond; or

(4) Other remedies for nonperformance of a contract available under common law or statutes.

(b) The Lessor's nonenforcement of a remedy for any violation does not prevent the Lessor from exercising any other remedies for any other violation or from exercising any other remedies for the same violation occurring at any other time.

_____

(Lessee)

_____

(Signature of Authorized Officer)

_____

(Name of Signatory)

_____

(Title)

_____

(Date)

_____

(Address of Lessee)

The United States of America, Lessor

_____

(Signature of Authorized Officer)

_____

(Name of Signatory)

_____

(Title)

_____

(Date)

If this lease is executed by a corporation, it must bear the corporate seal.

Dated: November 2, 1998.

Cynthia Quarterman,

Director.

[FR Doc. 98–29914 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF INTERIOR

National Park Service

Notice of Boundary Revision: Piscataway Park

SUMMARY: Notice is hereby given that the National Park Service is revising the boundary of Piscataway Park to include one additional tract of land.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cook, Chief, Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242, (202) 619–7034; and John Hale, Superintendent, National Capital Parks—East, Piscataway Park, 1900 Anacostia Drive, SW., Washington, D.C. 20020, (202) 690–5185.

SUPPLEMENTARY INFORMATION: Public Law 87–362 enacted October 4, 1961, authorizes the Secretary of the Interior to acquire lands and interests therein for Piscataway Park. Section 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by Section 814(b) of Public Law 104–333, authorizes minor boundary revisions of areas within the National Park System. Such boundary revisions may be made, when necessary, after advising the appropriate congressional committees, and following publication of a revised boundary map, drawing or other boundary description in the **Federal Register**. In order to preserve lands which comprise the principal viewshed from Mount Vernon and Fort Washington in a manner that will ensure, insofar as practicable, the natural beauty of such lands as it existed at the construction and active use of the Mount Vernon Mansion and Fort Washington, it is necessary to revise the existing boundary of Piscataway Park to include one additional tract of land comprising approximately 45 acres. The property is being acquired by donation.

Notice is hereby given that the exterior boundary of Piscataway Park is revised to include all that tract, piece, parcel or subdivision of land and premises, situated, lying and being in the Seventh Election District of Charles County, Maryland, and more particularly described as follows:

Beginning at a stake now fixed at a point on the south side of an extension of a 30 foot roadway lying between Lots 9 and 10 of Block ''B'' a subdivision of a part of the said William C. Gibons land ''Part of Marshall Hall,'' the said stake being more particularly fixed 990 feet north 64 degrees 13 minutes east of the intersection of the south side of the said 30 foot roadway with the east side of the State Road leading from Bryans Road Post Office to Marshall Hall, and running thence in direct extension of the said 30 foot roadway north 64 degrees 13 minutes east 1482 feet to the intersection with the boundary line or outline of the said William C. Gibons land where a stake is fixed; thence to the said outline south 19 degrees 03 minutes east 350 feet to a cedar stake a corner of said entire tract; thence still with the outline south 86 degrees 03 minutes east 1385 feet to a stake fixed in said outline; thence leaving said outline and running a division line between the land now surveyed and the land still owned by William C. Gibons south 64 degrees 13 minutes west 2640 feet to a stake there fixed; thence running parallel with the State Road and 990 feet distant (north 64 degrees 13 minutes east thereof) north 25 degrees 47 minutes west 1050 feet to the point of beginning, containing 45 acres, more or less.

Being all and the same land and premises acquired by Howard E. Jones and June E. Jones, his wife by Deed from Sandra H. Spessard, dated July 15, 1997,

and recorded July 17, 1997, among the Land Records of Charles County, Maryland, in Liber Number 2406, folio 253.

This parcel of land is depicted as Tract Number 02–218 on Land Status Map numbered 838–80036, Segment 2, dated July 1998 and is available for inspection in the Offices of the Land Resources Program Center, National Capital Region, National Park Service, Department of Interior, 1100 Ohio Drive, SW., Washington, D.C. 20242.

Dated: October 21, 1998.

Terry R. Carlstrom,

Regional Director, National Park Service, National Capital Region.

[FR Doc. 98–29857 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Roosevelt National Recreation Area Draft General Management Plan/ Environmental Impact Statement, Washington

AGENCY: National Park Service, DOT.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: The National Park Service announces the availability of a Draft General Management Plan/ Environmental Impact Statement (GMP/ EIS) for Lake Roosevelt National Recreation Area (NRA), Washington. This notice also announces public meetings for the purpose of receiving comments on the draft document.

DATES: Comments on the draft GMP/EIS should be received no later than January 31, 1999. Public meetings will be held in Coulee Dam, WA, on November 30, 1998; Spokane, WA, on December 1; Kettle Falls, WA, on December 2; and Davenport, WA, on December 3. The specific locations and times of the meetings will be announced in the local media.

SUPPLEMENTARY INFORMATION: Guidance for managing a national park system unit such as Lake Roosevelt NRA is usually done through the development of a general management plan. The current General Management Plan for Lake Roosevelt NRA was approved in 1980. However, much has changed in the past 18 years, and a new management plan is needed to guide managers and decision-makers regarding the future management and use of the national recreation area.

The draft GMP/EIS presents and analyzes two alternatives for managing Lake Roosevelt NRA for the next 15 to 20 years. Alternative 1 proposes a new plan for managing the area that would emphasize maintenance of the existing visitor experience by increasing the capacity of existing facilities where feasible and redirecting other increases in visitation to less used areas. Alternative 1 would provide a framework for decision making regarding natural and cultural resources management, visitor use and development, NRA operations, and land use. Alternative 2, a ''no action'' alternative, proposes a continuation of management according to the 1980 General Management Plan. The draft alternatives were developed with input from federal, tribal, state, and local governments; concerned groups and individuals; and the general public. The Environmental Impact Statement presents a full discussion of the environmental impacts associated with implementing each alternative.

ADDRESSES: Comments on the draft GMP/EIS should be submitted to: Superintendent, National Park Service, Lake Roosevelt NRA, 1008 Crest Drive, Coulee Dam, WA 99116–1259. Copies of the draft GMP/EIS are available by request from the aforementioned address. The document will also be available for review at the Office of Public Affairs, National Park Service, Department of the Interior, 1849 C St., NW, Washington, DC 20240, and on the Internet at www.nps.gov.

FOR FURTHER INFORMATION CONTACT: Harold Gibbs, Planning Coordinator, Lake Roosevelt National Recreation Area, phone (509) 633–9441, ext. 131, fax (509) 633–9332, or E-mail: harold__gibbs@nps.gov.

Dated: October 26, 1998.

Rory D. Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 98–29858 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–702–M

DEPARTMENT OF THE INTERIOR

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, December 18, 1998. The meeting will convene at 6:00 p.m. at the Wisdom High School, Saint Agatha, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

The implementation of an interpretive program of Acadian culture in the state of Maine.

The proceedings of a joint meeting with the Maine Acadian Heritage Council.

The Agenda for this meeting is as follows:

Review of April 10 and June 12, August 21 and October 23, 1998, summary reports.

2. Speaker: Pierre Chartrand on ''The Dance of Acadia and Quebec.''
3. Report of the National Park Service project staff.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5459.

Dated: October 28, 1998.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 98–29856 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Final Director's Order #77–1: Wetland Protection and Final Procedural Manual #77–1: Wetland Protection

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is converting and updating its current system of internal instructions in conformance with a new system of NPS internal guidance documents. As part of this process, the NPS recently made available for public review and comment (63 FR 45254) a draft Director's Order #77–1: Wetland Protection and a draft Procedural Manual #77–1: Wetland Protection. The Director's Order will revise NPS policies, standards, and requirements

for implementing Executive Order 11990: Protection of Wetlands, and the Procedural Manual will establish NPS procedures for implementing the Director's Order within units of the National Park System.

The public review period for the Director's Order and Procedural Manual ended on September 24, 1998. Comments received during this period have been carefully considered and have been incorporated into the documents, as appropriate (see **SUPPLEMENTARY INFORMATION**). The comments were mostly related to clarifying certain points in the Director's Order and Procedural Manual, and did not result in any substantive changes to the policies, requirements, standards, or procedures proposed in the draft documents.

The NPS now announces the availability of the final Director's Order #77–1 and final Procedural Manual #77–1. The previous NPS wetland protection guidance, found in the 1980 NPS Floodplain Management and Wetland Protection Guidelines (45 FR 35916, minor revisions in 47 FR 36718), is now rescinded.

SUPPLEMENTARY INFORMATION: The NPS received four sets of written comments during the public review. One commenter was concerned that Director's Order #77–1 and Procedural Manual #77–1 might apply to activities conducted by a private party on lands that are outside of NPS units. The NPS believes that Section 2.0 of the Director's Order and Section 4.1.B of the Procedural Manual clearly indicate that these policies, requirements, and procedures apply only to activities conducted by the NPS that are either on or otherwise affect lands managed by the agency. A minor wording change was incorporated into Section 4.1.B of the Procedural Manual to help clarify this point.

A state agency recognized the rationale for the 0.1 acre wetland impact threshold for required compensation (Section 5.2.C of the Procedural Manual), but expressed concern that this threshold could potentially lead to unacceptable cumulative impacts in arid areas where small wetlands are especially important. The NPS believes that these concerns are adequately addressed in several ways. First, these procedures and NPS National Environmental Policy Act (NEPA) procedures do not allow an action to be ''categorically excluded'' from the NEPA process if there is the potential for adverse impacts on wetlands. Therefore, such cumulative impacts would have to be addressed in an Environmental Assessment or an Environmental Impact Statement, and justified in the required wetland ''Statement of Findings'' (Section 5.3.D and 5.3.E of the Procedural Manual). Second, we believe that the required wetland avoidance and impact minimization steps outlined in Section 5.2 of the Procedural Manual, along with other NPS natural resources policies and procedures, make the choice of important desert aquatic habitats for development sites highly unlikely. Third, such actions would also be subject to the permitting provisions of Section 404 of the Clean Water Act. For these reasons, the NPS is convinced that such areas are adequately protected from such cumulative impacts, and no changes were made on this subject in the final documents.

A federal agency found the Director's Order and Procedural Manual to be clear and useful to NPS staff and the public, and provided a number of comments intended to further clarify information in the areas of wetland definitions, assessment methodologies, delineation manuals, compensation, inventories, and treatment of incidental wetlands. We found these suggestions to be useful, and incorporated a number of them via minor modifications of Sections 2.3 and 2.4 of the Director's Order and Sections 2.2.C, 2.2.D, 3.2, 4.1.A, 4.2.B, and 4.2.C of the Procedural Manual.

DATES: Director's Order #77–1: Wetland Protection and Procedural Manual #77–1: Wetland Protection became effective on October 22, 1998.

ADDRESSES: Director's Order #77.1: Wetland Protection and Procedural Manual #77.1: Wetland Protection are available on the Internet at the following address: http://www.nps.gov/refdesk/DOrders/index.htm Requests for copies should be sent to: Joel Wagner, National Park Service, Water Resources Division, P.O. Box 25287, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Joel Wagner at (303) 969–2955.

Dated: October 30, 1998.

Michael Soukup,

Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 98–29859 Filed 11–6–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Justice Management Division/ Information Resources Management/ Telecommunications Services Staff; Notice of Establishment of the Global Criminal Justice Information Network Advisory Committee

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2 (1972), and 41 CFR101–6.1001–6,1035 (1992), the Deputy Assistant Attorney General for Information Resources Management, with the concurrence of the U.S. Attorney General, is establishing the Global Criminal Justice Information Network Advisory Committee to define the core requirements of the Global Criminal Justice Information Network, be the advocate to the Attorney General and to Congress, and set guiding principles to implement the Global Criminal Justice Information Network capabilities.

The Government Advisory Group is authorized by Initiative A07, ''Address the Information Technology Needs of Our Nation's Criminal Justice Community,'' from Vice President Gore's National Performance Report entitled ''Across America.'' The specific actions of A07 state that the Government Advisory Group will ''define the core requirements of a Global Criminal Justice Information Network. Core requirements should include security and privacy protections * * * this group should also identify the challenges, such as funding, standards, and leadership, that might delay the network's implementation.''

Membership

In accordance with the provisions of National Performance Review Initiative A07, this Advisory Committee will be composed of representatives from federal, state, and local government criminal justice community organizations experienced in identifying the criminal justice community's requirements for sharing information.

The Global Criminal Justice Information Network Advisory Committee will consist of approximately 25 members appointed by the U.S. Attorney General. The Advisory Committee will be advisory only and will report to the U.S. Attorney General through the Deputy Assistant Attorney General for Information Resources Management.

CONTACT PERSON: R.D. Robertson, Department of Justice, JMD/IRM/TSS, 600 E Street NW, 3rd Floor, Washington, DC 20530.

TELEPHONE: (202) 514–1600, Fax: (202) 514–1043.

Richard B. Chapman,

Director, Telecommunications Services Staff, Information Resources Management, Department of Justice.

[FR Doc. 98–30002 Filed 11–6–98; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Justice Management Division/ Information Resources Management/ Telecommunications Services Staff; Notification of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Global Criminal Justice Information Network Advisory Committee will be held on December 10–11, 1998. The Group will meet from 9:00 am—5:00 pm on December 10, 1998 and from 9:00 am—2:00 pm on December 11, 1998 at the Hyatt Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, VA, 20171. The Advisory Committee will meet to carry out its activities identified under National Performance Review ''Access America'' Initiative A07.

This meeting will be open to the public. Any interested person must register two (2) weeks in advance of the meeting. Registrations will then be accepted on a space available basis. For information on how to register, contact R.D. Robertson, the Designated Federal Employee (DFE), 600 E Street NW, 3rd Floor, Washington, DC 20530, or call (202) 514–1600. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the DFE.

If you need special accommodations due to a disability, please contact Tom Michalisko at (703) 713–1234 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from R.D. Robertson, the DFE, 600 E Street NW, 3rd Floor, Washington, DC 20530, or call (202) 514–1600.

Richard B. Chapman,

Director, Telecommunications Services Staff, Information Resources Management, Department of Justice.

[FR Doc. 98–30001 Filed 11–6–98; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Violence Against Women Office; Meeting

AGENCY: United States Department of Justice and United States Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Council on Violence Against Women, co-chaired by the Attorney General and Secretary of Health and Human Services, will meet November 17 and 18, 1998 in the third floor conference room of the U.S. Department of Justice's Office of Justice Programs at 810 7th Street, NW, Washington, DC 20531. Scheduled to begin at 9:30 a.m. on November 17th and adjourn at 3:30 p.m. on November 18th, the meeting will include opening remarks by the Attorney General and Secretary Shalala, committee meetings, and an afternoon plenary session.

Committee meetings and the plenary session will be open to the public on a space-available basis. Reservations are required and a photo ID will be requested for admittance. To reserve a space and advise of any special needs, interested persons should call the U.S. Department of Justice Violence Against Women Office at (202) 616–8894. Sign language interpreters will be provided. Anyone wishing to submit written questions to the Council should notify the Violence Against Women Office by Thursday, November 12, 1998. The notification may be delivered by mail, telegram, or facsimile or in person. It should contain the requestor's name and his or her corporate or government designation or consumer affiliation along with a short statement describing the topic to be addressed. Interested parties may attend by calling Ms. Karen Noel at (202) 616–8894.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be sent to the Violence Against Women Office, United States Department of Justice, Room 5302, 950 Pennsylvania Avenue, NW, Washington, DC 20530, by telephone to (202) 616–8894, or by facsimile to (202) 307–3911.

Bonnie J. Campbell,

Director, Violence Against Women Office, United States Department of Justice.

[FR Doc. 98–30000 Filed 11–6–98; 8:45 am]

BILLING CODE 4410–BB–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10535, et al.]

Proposed Exemptions; Moody-Day, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of

proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Moody-Day, Inc. Profit Sharing Plan, (the Plan), Located in Carrollton, Texas

(Application No. D–10535)

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of an unimproved three-acre tract of real property located in Austin, Texas (the Property) to Metroport Realty Corporation (Metroport), an affiliate of Moody-Day, Inc., the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions were satisfied:

(a) the Sale was a one-time transaction for cash;

(b) the Plan received the fair market value of the Property on the date of the Sale;

(c) the Property was appraised by qualified, independent real estate appraisers;

(d) a qualified, independent fiduciary determined that the Sale was in the best interests of the Plan; and

(e) the Plan paid no commissions or other expenses relating to the Sale.

Effective Date of Exemption: If granted, the effective date of this exemption will be May 24, 1995.

Summary of Facts and Representations

1. The Applicants are Donald J. Carter, William J. Hendrix, and M. Douglas Adkins in their capacity as trustees (Trustees) of the Moody-Day, Inc. Profit Sharing Plan, and Ronald L. Carter and Jeffery Fink who were directors of Moody-Day, Inc. (Moody-Day) on the date of the Sale.

2. The Applicants state that the Plan is a defined contribution plan which had 50 participants as of the end of the 1994 Plan year. The Applicants state further that at the time of consummation of the Sale, the fair market value of the total assets of the Plan was $217,545. The fair market value of the Property was determined to be $165,000 (see paragraph 8 below) at that time. Thus, approximately 76% of the Plan's assets was involved in the subject transaction.[2]

3. The Property was owned by the Plan at the time of the Sale free and clear of any encumbrances. The Property consists of approximately 3 acres of unimproved land at the Northeast corner of Middle Fiskville Road and Northcape Drive in the City of Austin, Travis County, Texas. The Property was not adjacent to any property owned by the Plan sponsor or a party in interest with respect to the Plan.

The Property was acquired by the Plan in 1977 from an unrelated party, for $47,154. The Applicants represent that the Property has been held by the Plan since it was acquired in 1977 and it has not been leased to or used by any party in interest or other related party during such time.[3]

4. The Applicants represent that the motivation for the Sale of the Property by the Plan to Metroport was solely to benefit the Plan's participants and beneficiaries. The Plan had been frozen since 1991 and the participants and beneficiaries were requesting that distributions of their assets be made. The Plan had tried, without success, to sell the Property on the open market since 1989. The Applicants represent that the Sale of the Property was in the best interests of the Plan and its participants and beneficiaries. At the time of the Sale, the Property was the last remaining asset of the Plan. Thus, the Sale provided the necessary liquidity to allow for a termination of the Plan and a final distribution of its assets.

Prior to the Sale, the Applicants were advised by their legal counsel (Counsel) that the Property could be sold to Metroport pursuant to Prohibited Transaction Exemption (PTE) 84–14 (49 FR 9494, March 13, 1984), a class exemption for certain prohibited transactions by a plan whose assets are managed by a ''qualified professional asset manager'' or ''QPAM'' (the QPAM Exemption).[4] The Applicants represent that they now believe that the conditions of PTE 84–14 may not have been satisfied with respect to the Sale. As a result, they request that the Department consider granting an individual exemption under section 408(a) of the Act, which would be effective as of May 24, 1995, the date of the Sale.

5. In order to fulfill what the Applicants, Moody-Day, Inc., Metroport and Counsel believed to be the requirements of PTE 84–14 with respect to the Sale, on or about December 19, 1994, the Applicants, on behalf of the Plan, hired Lucian L. Morrison (Mr. Morrison) as an independent fiduciary for the purpose of appointing a QPAM to sell the Property owned by the Plan. Prior to this time, Counsel had contacted Mr. Morrison, the past President of Heritage Trust Company in Houston, Texas, with regard to his willingness to act as an independent fiduciary for the Plan. Counsel, on behalf of the Applicants, had contacted Mr. Morrison because he had acted in a fiduciary capacity in a number of

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[2] It is represented that a high percentage of the Plan's assets was involved in the Sale because the Property was one of the only remaining assets of the Plan at the time of the transaction. In this regard, the Sale was carried out in connection with completing the affairs of the Plan for termination.

[3] The Department expresses no opinion herein regarding whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act. The Department is providing no retroactive exemptive relief herein with respect to the acquisition and holding of the Property by the Plan.

[4] PTE 84–14 provides relief from the restrictions of section 406(a) of the Act for transactions between parties in interest and plans where a QPAM (as defined in Part V(a) of that class exemption) is the decision-maker for the assets of the plan involved, and certain other conditions are met.

situations for various entities. On July 11, 1994, Counsel informed the Applicants that Mr. Morrison was willing to act on behalf of the Plan in appointing a QPAM to have investment discretion with respect to the Sale. Counsel advised Moody-Day and the Applicants that in order to comply with PTE 84–14, the Sale would proceed as follows:

(1) Mr. Morrison would appoint a QPAM to represent the Plan with respect to the potential sale of the Property;

(2) the QPAM would hire its own appraiser or appraisers and attorney to represent it in the transaction and, if appropriate, to negotiate the terms of the sale between the Plan and Metroport; and

(3) after the final terms of any transaction were negotiated and approved, the sale would close with all appropriate documents properly executed.

Therefore, on December 19, 1994, Mr. Morrison was engaged as an independent fiduciary of the Plan to select and hire a QPAM to evaluate the proposed transaction and to negotiate the terms thereof. Mr. Morrison had full authority to select the QPAM and to allocate a portion of his fiduciary authority to the QPAM. No recommendations for the selection of the QPAM were made by either Moody-Day, the Applicants, or any other party in interest with respect to the Plan.

6. On December 19, 1994, a ''Limited Purpose Independent Fiduciary Agreement'' (the Limited Agreement) was formally entered into between Moody-Day, the Trustees, and Mr. Morrison. The purpose of the Limited Agreement was to facilitate the Sale of the Property. The Limited Agreement stated that the Sale would be a prohibited transaction unless an exemption from the prohibited transaction rules of the Act was utilized. The Limited Agreement further specified that the QPAM Exemption was available for this purchase if the conditions of that exemption were met.[5]

Mr. Morrison accepted his appointment as a limited purpose independent fiduciary and agreed to act as provided for under the Limited Agreement, the Plan Document, and the Act. Mr. Morrison selected Sarofim Realty Advisors (SRA) as a ''QPAM'' to transact the Sale of the Property by the Plan. SRA, as a fiduciary of the Plan, served as investment manager with exclusive investment discretion over the Property. The Applicants represent that SRA, as fiduciary of the Plan, was not related to or otherwise affiliated with Moody-Day, Inc., Metroport, Counsel or the Applicants.

7. On December 22, 1994, Mr. Morrison, SRA and Moody-Day entered into an ''Investment Management Agreement'' (the IMA). As independent fiduciary, Mr. Morrison appointed SRA as an Investment Manager (IM) of the Plan for purposes of the proposed transaction. In Section 2 of the IMA, SRA acknowledged that in acting as an IM under the IMA, it would be acting as a fiduciary of the Plan as defined under section 3(21) of the Act. Section 4 of the IMA provides, in pertinent part, that the IM shall: (1) Evaluate the proposed transaction and, if appropriate; (2) negotiate the terms of the Sale. Section 4 also provides that the IM shall sell the Property to Metroport if, in the IM's judgement, the sale price negotiated by the IM represented the fair market value of the Property as determined by the IM after considering one or more appraisals obtained from qualified, independent appraisers. Finally, section 6 of the IMA provides that the agreement shall terminate on the closing date of the proposed sale in the event that the IM directs the Plan to enter into the sale of the Property to Metroport.

8. In order to determine the fair market value of the Property, SRA, in its capacity as IM, retained the independent appraisal firm of Bach Thoreen McDermott, Inc., of Houston, Texas, to appraise the Property. Mr. Steven N. Bach (Mr. Bach), MAI, prepared the appraisal that was used to establish the value of the Property for the Sale.[6] Using the Sales Comparison Approach (i.e. which relied on recent sales of similar properties in the open market) to value the Property, Mr. Bach determined that the fair market value of the Property, as of January 30, 1995, was $165,000. Mr. Bach reported his finding to SRA on the same date.

9. On February 1, 1995, SRA in its capacity as IM, opined that $165,000 represented the fair market value of the Property and determined that the Sale to Metroport at that price would be in the best interests of the Plan and its participants and beneficiaries.

10. Pursuant to SRA's findings and instructions for the Sale, the Plan sold the Property to Metroport for $165,000 in cash on May 24, 1995. In this regard, a Special Warranty Deed conveying title to the Property from the Plan to Metroport was signed on May 24, 1995 by a Trustee of the Plan. With respect to the Sale, the Plan paid no commissions or other expenses.

Moody-Day represents that all parties involved in the Sale recognized that Metroport was paying the Plan an amount which represented no less than the current fair market value of the Property.

11. In summary, the Applicants represent that the requested exemption

[5] In this regard, Part I(a) of PTE 84–14 provides that:

(a) At the time of the transaction (as defined in section V(i)) the party in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding one year has not exercised, the authority to—

(1) Appoint or terminate the QPAM as a manager of any of the plan's assets, or (2) negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan; * * *

Part I(c) of PTE 84–14 provides that:

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general directions of, the QPAM, and either the QPAM or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest; * * *

Part V(c)(3) of PTE 84–14 provides, in relevant part, that a named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Part I(a) if such an employer * * * has the authority * * * to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

Section 402(a) of ERISA provides that every employee benefit plan shall be established and maintained pursuant to a written instrument. This instrument must provide for one or more named fiduciaries who have the authority to control and manage the operation and administration of the plan. Under sections 402(c)(3) and 403(a) of ERISA, only a named fiduciary has the authority to appoint an investment manager, and such an appointment may be made only as specifically provided in the plan instrument.

The preamble to the proposed class exemption, 47 FR 56945 at 56947 (December 21, 1982), explains that the Department is prepared to grant broad exemptive relief only where an independent asset manager has, and in fact exercises, discretionary authority to cause an investment fund to enter into a transaction which is otherwise prohibited. Party in interest transactions that are negotiated by, e.g., an employer which sponsors a plan, and are then presented to a QPAM for approval would not qualify for the class exemption as proposed.

It is the view of the Department that the retention of a QPAM solely to approve a specific transaction presented for its consideration by a plan sponsor at the time of its engagement is inconsistent with the underlying intent of the exemption, i.e., the transfer of plan assets to an independent, discretionary manager free from the undue influence of the sponsor. Such a transaction also raises issues under section I(c) of the exemption which requires that the transaction not be a part of an agreement, arrangement or understanding designed to benefit a party in interest.

[6] SRA also secured an appraisal from Crosson Dennis, Inc., an independent real estate appraisal firm, who determined that the Property had a fair market value of $95,000 as of December 22, 1994. However, after consulting with Counsel and the Trustees, SRA selected Mr. Bach for the purpose of securing a second appraisal of the Property.

will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Sale was a one-time transaction for cash; (b) the Plan received the fair market value of the Property on the date of the Sale; (c) the fair market value of the Property was determined by an independent, qualified real estate appraiser at the time of the Sale; (d) a qualified, independent fiduciary acting on behalf of the Plan appointed an independent investment manager who negotiated the terms of the transaction, determined that the Sale was in the best interests of the Plan, and assured that the Plan received an amount in cash equal to the fair market value of the Property; and (e) the Plan paid no commissions or other expenses relating to the Sale.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Mohammad J. Iqbal Employee Profit Sharing Plan and Trust (the Plan), Located in Elizabethtown, KY

(Application Number D–10614)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of 12 Krugerrand gold coins (the Coins) by the individually directed account (the Account) in the Plan of Dr. Mohammad J. Iqbal (Dr. Iqbal), to Dr. Iqbal, a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are as least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;

(c) The Account receives the fair market value of the Coins as of the date of Sale; and

(d) The Account is not required to pay any commissions, costs, or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan that provides its 3 participants with the opportunity to direct the investment of their individual accounts. The Plan is sponsored by Dr. Iqbal, who also serves as Plan Trustee and Plan Administrator. As of December 31, 1997, the Plan held assets valued at approximately $2,199,000. As of the same date, Dr. Iqbal's Account held assets valued at approximately $2,110,000.

2. Among the assets in the Account are 12 Krugerrand gold coins. The Coins, issued by the South African government, were purchased by the Account on March 6, 1992, for $4,848 from the Gumer & Company brokerage firm located in Louisville, Kentucky.[7] As of Friday, October 23, 1998, the asking price in the Wall Street Journal was $300 per coin.

3. The applicant requests an exemption for the proposed Sale of the Coins by the Account to Dr. Iqbal. Dr. Iqbal represents that he will pay fair market value for the Coins on the date of the Sale, as determined by the asking price listed in the ''Cash Prices'' table in the Wall Street Journal on such date. The applicant wishes to engage in the proposed transaction because the Coins have steadily declined in value.[8] Dr. Iqbal wishes to have the Account reinvest the proceeds from the proposed Sale in assets which may generate a higher rate of return.

4. The applicant represents that the proposed transaction would be administratively feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Account because the Sale of the Coins would enable the Account to invest the proceeds from the Sale in other assets and potentially achieve a higher rate of return. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the Account will receive the fair market value of the Coins as of the date of Sale, and will incur no commissions, costs or other expenses as a result of the Sale.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Sale will be a one-time transaction for cash; (b) the terms and conditions of the Sale will be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party; (c) the Account will receive the fair market value of the Coins as of the date of Sale; and (d) the Account will not be required to pay any commissions, costs, or other expenses in connection with the Sale.

Notice to Interested Persons: Because Dr. Iqbal is the only participant to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number.)

Individual Retirement Accounts (Collectively, the IRAs) for William N. Albright, Victor Hamre, and Richard Pearson, (Collectively, the Participants) Located in Westerville, Ohio; Chicago, Illinois; and New York, New York, Respectively

(Application No. D—10656, 10657, 10658)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sales (the Sales) of certain shares of stock (the Stock) in the First Community Bancshares Corp. (First Community) by each IRA to its respective Participant, a disqualified person with respect to the IRA,[9] provided that the following conditions are met:

(a) The terms and conditions of the Sales will be at least as favorable to each

[7] The applicant represents that, at the time of the original acquisition, the Plan was not an ''individually directed account plan.'' The Department notes that section 408(m) of the Code provides, in pertinent part, that ''[t]he acquisition * * * by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.'' Section 408(m)(2)(A) includes coins in the definition of the term collectible. In this regard, the Department is not providing any exemptive relief to the extent section 408(m) is applicable to the facts in this case.

[8] The Department expresses no opinion in this proposed exemption as to whether the acquisition and the subsequent holding of the Coins by the Account violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

[9] There is no jurisdiction under 29 CFR § 2510.3(b) since the IRAs have only one participant. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

IRA as those obtainable in arm's length transactions with an unrelated party;

(b) The Sales will be one-time transactions for cash;

(c) The IRAs will receive the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) The IRAs will pay no commissions, costs or other expenses with respect to the Sales.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in Section 408(a) of the Code. Each IRA owns shares of Stock in First Community. First Community is a bank holding company located in Milton, Wisconsin with 230,789 shares of Stock issued and outstanding. First Community's primary assets are First Community's 100% ownership of two banks: Citizens Savings Bank located in Anamosa, Iowa with approximately $37.6 million in total assets and First Community Bank located in Milton, Wisconsin with approximately $62.7 million in total assets.

2. The Participants of the IRAs are: William N. Albright, the president of First Community Bank; Victor Hamre, the president of Citizens Savings Bank; and Richard Pearson, a director at both First Community Bank and Citizens Savings Bank. The Participants describe the IRAs as follows:

(a) The IRA of William N. Albright (the Albright IRA) currently holds total assets valued at approximately $289,538. The Albright IRA's ownership of 9,200 shares of the Stock comprises 99.74% of the Albright IRA's total assets and represents a 3.99% interest in First Community.[10] The Albright IRA acquired the Stock in 1995 for investment purposes from an existing First Community shareholder for $23.00 per share.

(b) The IRA of Victor Hamre (the Hamre IRA) currently holds total assets valued at approximately $82,907. The Hamre IRA's ownership of 1,087 shares of the Stock comprises 41.16% of the Hamre IRA's total assets and represents a 0.47% interest in First Community. The Hamre IRA acquired the Stock in 1995 for investment purposes from an existing First Community shareholder for $23.00 per share.

(c) The IRA of Richard Pearson (the Pearson IRA) currently holds total assets valued at approximately $413,084. The Pearson IRA's ownership of 5,941 shares of the Stock comprises 41.73% of the Pearson IRA's total assets and represents a 2.57% interest in First Community. The Pearson IRA acquired the Stock for investment purposes from First Community when First Community issued new shares in 1991 and 1992 for $17.15 and $19.14 per share, respectively.[11]

3. The Participants represent that business considerations have recently caused First Community to elect to be taxed as a Subchapter S corporation. This election is tentatively scheduled to become effective as of the close of business on December 31, 1998. The Participants propose to purchase the Stock from their respective IRAs to avoid the violation of section 1361 of the Code which prohibits IRAs from holding stock in a Subchapter S corporation.

4. Mr. Kent Fisher and Mr. Neal Richardson (collectively, the Appraisers) appraised the Stock on June 30, 1998. The Appraisers are both experienced business appraisers for Lindgren, Callihan, Van Osdol & Co., Ltd., an appraisal company independent of the IRAs and the Participants. The Appraisers represent that they have no present or contemplated financial interest in First Community and their fees were not contingent upon the results of their findings. In their evaluation of the Stock, the Appraisers relied solely on the Private Market Method.[12] The Appraisers concluded that the fair market value of the Participants' interest in the non-marketable, non-controlling Stock was $31.39 per share.[13]

5. The Participants propose to purchase the Stock from their respective IRAs in one-time transactions for cash. The Participants represent that the Sales will be in the best interest of the IRAs because the Sales will allow for greater diversification of the IRAs' assets and the Stock will be purchased at a price per share greater than the price per share initially paid by the IRAs. Additionally, the Participants represent that the Sales will be protective of the rights of each IRA's participant because each IRA will receive cash equal to the fair market value of the Stock, as determined by a qualified, independent appraiser, and each IRA will incur no commissions, costs, or other expenses as a result of the Sales.

6. In summary, the Participants represent that the Sales satisfy the statutory criteria of section 4975(c)(2) of the Code because:

(a) The terms and conditions of the Sales will be at least as favorable to each IRA as those obtainable in arm's length transactions with an unrelated party;

(b) The Sales will be one-time transactions for cash;

(c) The IRAs will receive the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) The IRAs will pay no commissions, costs or other expenses with respect to the Sales.

Notice to Interested Persons: It has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons since the Participants are the only participants in the IRAs. Comments and requests for a hearing are

[10] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions with respect to the exclusive benefit rule under section 401(a) of the Code. See, e.g. Rev. Rul. 73–632, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that a trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Stock by the Participants.

[11] To the extent that First Community or other sellers of the Stock were not disqualified persons with respect to the IRAs under section 4975(e)(2), the purchase of the Stock by the IRAs does not constitute a prohibited transaction under section 4975(c)(1)(A) of the Code. However, the purchase and holding of the Stock raises questions under section 4975(c)(1)(D) and (E) depending on the degree (if any) of the IRA participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. The IRA sponsors, as presidents or director of the First Community Bank or Citizens Savings Bank, may have interests in the proposed transactions which may have affected their best judgment as fiduciaries of their IRAs. In such circumstances, the transactions may have violated 4975(c)(1)(D) and (E) of the Code. See Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions herein.

[12] Although the Appraisers considered the Public Market Method in their evaluation, they determined that this method was too difficult to implement due to First Community's geographic location and financial structure. The Appraisers additionally considered the prices paid for the Stock in previous Stock purchases but determined that there were no recent purchases which would provide an accurate valuation of the Stock.

[13] The Appraisers calculated the price of the Stock by first adjusting the equity levels of a comparable group of recently sold banks to reflect 8% or ''normal'' capitalization levels. The Appraisers then determined the average price to ''normal'' equity ratio for this group of banks and multiplied this ratio against First Community's adjusted book value. After subtracting First Community's debt from this amount to calculate First Community's value, this value was then divided by the number of outstanding shares to determine the Stock's price per share. Finally, the Appraisers discounted the resulting price per share to reflect the Stock's non-marketable and non-controlling nature.

due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Motta of the Department, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of November, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–29962 Filed 11–5–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10574]

Notice of Proposed Individual Exemption to Amend Prohibited Transaction Exemption (PTE) 94–50 Involving Salomon Smith, Barney Inc. (Salomon Smith Barney) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 94–50.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 94–50 (59 FR 32024, June 21, 1994), an exemption granted to Smith Barney, Inc. (Smith Barney), the predecessor of Salomon Smith Barney. PTE 94–50 relates to the operation of the TRAK Personalized Investment Advisory Service product (the TRAK Program) and the Trust for TRAK Investments (subsequently renamed the Trust for Consulting Group Capital Markets Funds) (the Trust). If granted, the proposed exemption would affect participants and beneficiaries of and fiduciaries with respect to employee benefit plans (the Plans) participating in the TRAK Program.

EFFECTIVE DATE: If granted, the proposed amendments will be effective as of November 9, 1998.

DATES: Written comments and requests for a public hearing should be received by the Department on or before December 24, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Application No. D–10574. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend PTE 94–50. PTE 94–50 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 94–50 provides exemptive relief from the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for the purchase or redemption of shares in the Trust by an employee benefit plan, an individual retirement account (the IRA), or a retirement plan for a self-employed individual (the Keogh Plan). PTE 94–50 also provides exemptive relief from the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by the Consulting Group of Smith Barney (the Consulting Group), of investment advisory services to independent fiduciaries of participating Plans (the Independent Plan Fiduciaries) that might result in such fiduciary's selection of an investment portfolio (the Portfolio) under the TRAK Program for the investment of Plan assets.[1]

[1] On October 5, 1992, the Department granted PTE 92–77 at 55 FR 45833. PTE 92–77 permitted Shearson Lehman Brothers, Inc. (Shearson Lehman) to make the TRAK Program available to Plans that acquired shares in the Trust. In this regard, PTE 92–77 permitted Plans to purchase or redeem shares in the Trust and allowed the Consulting Group to provide investment advisory services to an Independent Fiduciary of a Plan which might result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

Subsequent to the granting of PTE 92–77, on July 31, 1993, Smith Barney acquired certain assets of Shearson Lehman associated with its retail business, including the TRAK Program, and applied for and received a new exemption (PTE 94–50) for

Continued

Besides the transactions described above, PTE 94–50 permitted Smith Barney to add a daily-traded collective investment fund (the GIC Fund) to the existing Fund Portfolios and to describe the various entities operating the GIC Fund. Further, PTE 94–50 replaced references to Shearson Lehman with references to Smith Barney. PTE 94–50 is effective as of July 31, 1993 for the transactions described in PTE 92–77 and effective as of March 29, 1994 with respect to transactions involving the GIC Fund.

As of December 31, 1997, the TRAK Program held assets that were in excess of $8.4 billion. Of those assets, approximately $1.7 billion were held in 540, 401(k) Plan accounts and approximately 57,100 employee benefit plan and IRA/Keogh-type accounts. At present, the Trust consists of 13 Portfolios that are managed by the Consulting Group and advised by one or more unaffiliated sub-advisers selected by Salomon Smith Barney.

Salomon Smith Barney has informed the Department of certain changes, which are discussed below, to the facts underlying PTE 94–50. These modifications include (1) corporate mergers that have changed the names of the parties described in PTE 94–50 and would permit broader distribution of TRAK-related products, (2) the implementation of a recordkeeping reimbursement offset system (the Recordkeeping Reimbursement Offset Procedure) under the TRAK Program, and (3) the institution of an automated reallocation option (the Automatic Reallocation Option) under the TRAK Program for which Salomon Smith Barney has requested administrative exemptive relief from the Department.

The proposed exemption has been requested in an application filed on behalf of Salomon Smith Barney pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, the proposed exemption is being issued solely by the Department.

the ongoing operation of the TRAK Program. Essentially, PTE 94–50 amended and replaced PTE 92–77. However, because of certain material factual changes to the representations supporting PTE 92–77, the Department determined that the exemption was no longer effective for use by Smith Barney and its subsidiaries as of the date of the asset sale.

1. *The Corporate Mergers.* Salomon Smith Barney states that in November 1997, a subsidiary of the Travelers Group Inc. (the Travelers Group), the parent of Smith Barney, acquired all of the shares of Salomon Brothers, Inc. (Salomon). Subsequent to the acquisition, Salomon and Smith Barney were operated as separately-registered broker-dealers and as sister corporations with a common parent. On September 1, 1998, Salomon was merged with and into Smith Barney, with Smith Barney remaining as the surviving corporation. As a result of the merger, the corporate name of Smith Barney has been changed to ''Salomon Smith Barney Inc.''

Salomon Smith Barney also states that in April 1998, the Travelers Group and Citicorp Inc. (Citicorp) announced a stock merger whereby Citicorp would be merged with and into a subsidiary of the Travelers Group. As a result of the merger, the Travelers Group would become a bank holding company and change its name to ''Citigroup Inc.'' (Citigroup).

Salomon Smith Barney represents that the purpose of the merger is to create more distribution channels for TRAK products. In this regard, registered broker-dealers associated with Citigroup will be permitted to market the TRAK Program under a different product name. However, Salomon Smith Barney explains that the terms and conditions of PTE 94–50 and this amendment will be complied with by the parties involved.

The merger, which occurred on October 8, 1998, required that the affected parties obtain approval from the Federal Reserve Board under the Bank Holding Company Act (the BHC Act). Under the BHC Act, the Federal Reserve Board does not authorize bank holding companies, such as Citigroup, to be affiliated with companies that organize, sponsor, control or distribute United States open-end mutual funds. As a bank holding company, Citigroup is required to engage an independent party to provide certain distribution services in connection with the marketing of mutual fund shares) for all United States, publicly-traded mutual funds for which any subsidiary of the Travelers Group/Citigroup acts as a distributor. Salomon Smith Barney notes that although the Funds participating in the TRAK Program will be affected by this change, no Plan will be required to pay distribution fees to the independent distributors.

On October 15, 1998, Salomon Smith Barney was merged with and into Pendex Real Estate Corp. (Pendex), a shell corporation domiciled in New York. Pendex, the survivor of the merger, was then renamed ''Salomon Smith Barney Inc.'' Upon completion of this merger, Salomon Smith Barney became a New York corporation.

2. *Recordkeeping Reimbursement Offset Procedure.* Salomon Smith Barney states that the Board of Trustees (the Board) of the Funds approved, but has not yet implemented, a recordkeeping reimbursement offset procedure under which a Plan participating in the TRAK Program would be permitted to reduce its investment fees and expenses. The reimbursement amount would be paid solely by the Funds as a means of being competitive with other mutual funds offering similar reimbursements to investors.

In May 1998, the Board approved a recordkeeping reimbursement amount of $12.50 for each investment position held by a participant. (In other words, a participant holding positions in three different Funds would be eligible to receive a total annual reimbursement of $37.50). In addition, the Board resolved that after applying such reimbursement to recordkeeping expenses charged by recordkeepers of the Plans, any excess reimbursement amount would be applied to reduce other fees and expenses [2] payable by participating Plans, including, but not limited to, the Plan-level investment advisory fee payable to the Consulting Group for asset allocation recommendations (the Outside Fee), after the appropriate offset has been applied (the Net Outside Fee).[3] If implemented, Salomon Smith Barney explains that the Funds would pay the appropriate reimbursement amount directly to the recordkeeper of the Plan. The affected Plan would then be required to pay only the balance of the fee, which is generally charged on a quarterly basis, after the excess reimbursement amount has been deducted.

The Recordkeeping Reimbursement Offset Procedure would work as follows:

Assume that Plan A has $1 million in assets invested in the TRAK Program and 100 participants. Assume further that Plan A pays its recordkeeper $20 per participant per year in Annual Fees totaling $2,000 per year or

[2] In addition to annual recordkeeping fees (the Annual Fees) payable by a Plan participating in the TRAK Program, it is represented that a Plan might be required to pay recordkeeping fees associated with certain particular services (the Other Fees) such as initial plan set-up and conversion, preparation of annual filings, enrollment, special statement preparation and audit.

[3] Salomon Smith Barney is offsetting, quarterly, against the Outside Fee, such amount as is necessary to assure that the Consulting Group retains not more than 20 basis points (as an Inside Fee) from any Portfolio on investment assets attributable to any Plan.

$500 per quarter and $12 per participant per year in Other Fees, totaling $1,200 per year or $300 per quarter. In addition, Plan A pays the Consulting Group a total annual net investment advisory fee (i.e., the Net Outside Fee) of $8,500.

At the end of each calendar quarter, Plan A's recordkeeper will determine the actual number of Fund positions held by the Plan A participants and calculate the resulting reimbursement amount. If Plan A had 300 participant positions at the end of the quarter, the Plan's total recordkeeping reimbursement amount would be 300 x $3.125 (the annual amount of $12.50 divided by 4) or $937.50. That amount would be credited as follows:

APPLICATION OF REIMBURSEMENT TO RECORDKEEPING FEES

Quarterly Portion of Annual Fees	$500.00
Quarterly Portion of Other Fees	300.00
Total Quarterly Recordkeeping Fees	800.00
Credit for Reimbursement	(937.50)
Excess Reimbursement	(137.50)

Because the reimbursement amount exceeds the recordkeeping fees due for the quarter, the Plan does not owe any recordkeeping fee for that period. Therefore, the recordkeeper will not bill the Plan.

APPLICATION OF EXCESS REIMBURSEMENT TO THE NET OUTSIDE FEE

Quarterly Net Outside Fee	$2,125.00
Excess Reimbursement	(137.50)
Total	1,987.50

The recordkeeper will advise the Consulting Group that it is entitled to bill the Plan for the $1,987.50 balance of its investment advisory fee (i.e., the Net Outside Fee).

Upon participation in the TRAK Program, an Independent Plan Fiduciary selects a recordkeeper for the Plan, from a list of recordkeepers which maintain computer links to the Funds under the TRAK Program. Salomon Smith Barney states that of the 23 recordkeepers currently providing services to TRAK Program investors, only one, Smith Barney Plan Services, is an affiliate. Because the reimbursement rate and the timing of the offset of the excess reimbursement amount against fees will be the same regardless of the identity of the recordkeeper and the Independent Plan Fiduciary is responsible for the selection of this particular recordkeeper, Salomon Smith Barney believes its affiliation with Smith Barney Plan Services does not appear to present additional potential abuses under section 406(b)(1) or 406(b)(3) of the Act in its capacity as an investment adviser in recommending investment in the Funds to Independent Plan Fiduciaries.

Salomon Smith Barney notes that the reasoning in the Frost National Bank Advisory Opinion (ERISA Advisory Opinion 97–15A, May 22, 1997) (the Frost Opinion), is relevant to this situation. Therefore, it has not requested administrative exemptive relief from the Department. Salomon Smith Barney explains that in the Frost Opinion, the bank offered a comprehensive program of administrative and investment services to Plan investors. Under this program, the Department opined that section 406(b)(1) and 406(b)(3) of the Act would not be violated if the bank received payments for services from mutual funds while recommending mutual fund investments to plans provided such payments were fully disclosed and then offset to reduce other plan expenses, with any excess payments made to the plans. Salomon Smith Barney further explains that in the Frost Opinion any benefit from payments made by the mutual funds benefitted the plans and not the bank.

With respect to the TRAK Program, Salomon Smith Barney represents that the reimbursement rates adopted by the Funds will be fully disclosed to Independent Plan Fiduciaries and the offset of the excess reimbursement amount against a Plan's expenses will be accomplished in a manner to ensure that the Plans obtain the full benefit of the reimbursement to reduce their recordkeeping and other Plan expenses. Salomon Smith Barney submits that the reasoning in the Frost Opinion would apply equally to the proposed reimbursement of expenses under the TRAK Program. Therefore, Salomon Smith Barney does not believe any change in the scope of the exemption is necessary.[4]

3. *The Automatic Reallocation Option.* Salomon Smith Barney wishes to modify the TRAK Program to institute an automated reallocation feature whereby an Independent Plan Fiduciary could elect to have his or her current asset allocation adjusted automatically whenever the Consulting Group changes the recommended asset allocation model (the Allocation Model) followed by such Plan or participant.[5] Therefore, Salomon Smith Barney proposes to amend General Condition II(f) of PTE 94–50 which requires that any recommendation or evaluation offered by the Consulting Group be implemented only upon the express direction of the Independent Plan Fiduciary. With the exception of the requested changes to General Condition II(f) of PTE 94–50, all of the existing conditions of PTE 94–50 will continue to apply to the TRAK Program.

As noted above, General Condition II(f) of PTE 94–50 provides that any recommendation or evaluation by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such fiduciary. Accordingly, under the current exemption, whenever asset allocation advice is modified by the Consulting Group, Salomon Smith Barney states that its Financial Consultants are required to contact the Independent Plan Fiduciary of each Plan who has chosen the Allocation Model, and obtain such fiduciary's consent to modification of the asset allocation applied to the Plan's account.

Salomon Smith Barney notes that many TRAK Program investors have expressly indicated that they expect reallocations to take place in the ordinary course of the provision of investment advisory services offered by the Consulting Group. However, these investors do not understand why they need to be contacted in each instance

[4] In this proposed exemption, the Department expresses no opinion on whether the Frost Opinion is applicable to the recordkeeping reimbursement procedure described above. In this regard, the Department notes that, under the facts presented in the Frost Opinion, Frost would offset the fees received from the mutual funds on a dollar-for-dollar basis against the trustee fees that the plan was otherwise obligated to pay Frost.

[5] Salomon Smith Barney notes that the Automatic Reallocation Option is to be distinguished from ''rebalancing'' which occurs after the passage of time from the original allocation decision and changes a participant's investment mix to bring the actual allocation among investment alternatives back in line with the participant's original allocation choices. For example, Salomon Smith Barney states that a Plan participant receives a written quarterly review that sets forth information concerning the participant's investments and includes a chart comparing the original asset allocation recommendation and the actual percentage distribution of investments held in the portfolio. Salomon Smith Barney explains that under the chart is the following legend:

TRAK is a non-discretionary investment advisory service. All investment decisions rest with you, the participant. Therefore, you are strongly urged to adhere to the Consulting Group's asset allocation recommendations. Please call your Financial Consultant should a change in allocation be warranted due to a significant difference between the portfolio originally recommended by the Consulting Group and your allocation or due to a change in your objectives.

Salomon Smith Barney further explains that the Financial Consultant is expected to contact participants at least annually to encourage a comparison of the holdings in the portfolio against the Consulting Group's original recommendation. Barney proposes to amend General Condition II(f) of PTE 94–50 which requires that any recommendation or evaluation offered by the Consulting Group be implemented only upon the express direction of the Independent Plan Fiduciary. With the exception of the requested changes to General Condition II(f) of PTE 94–50, all of the existing conditions of PTE 94–50 will continue to apply to the TRAK Program.

for this purpose. In addition, Salomon Smith Barney explains that the case-by-case contact and reallocation involves delay in implementing the change at the client's express direction, putting similarly-situated investors into the new Allocation Models at different times.

To resolve these problems, Salomon Smith Barney proposes to offer TRAK Program investors an Automatic Reallocation Option. Because Salomon Smith Barney recognizes that the Automatic Reallocation Option is outside the scope of PTE 94–50, it requests a modification of the existing terms of PTE 94–50 to the extent necessary to allow it to offer this alternative to investors. If the exemptive relief is granted, Salomon Smith Barney represents that it will fully disclose the nature of the Automatic Reallocation Option to the Independent Plan Fiduciary of each existing client Plan in a written notice (the Announcement) and permit the fiduciary to elect the Automatic Reallocation Option by responding in writing. The Announcement will describe the intended operation of the Automatic Reallocation Option and how future changes to the Allocation Model selected on behalf of the Plan will be implemented. In order to implement the Automatic Reallocation Option for new TRAK Program investors, the Independent Plan Fiduciary will be required to check a box on the form of Investment Advisory contract with Salomon Smith Barney (or on a separate document designed for this purpose for those investors who have already executed such an agreement with Salomon Smith Barney). By checking the box, the Independent Plan Fiduciary will indicate its consent to and authorization of actions to be taken by Salomon Smith Barney to reallocate automatically the asset allocation in the Plan account whenever the Consulting Group modifies the particular asset allocation recommendation which the Plan or participant has chosen. Such election will continue in effect until revoked or terminated by the Plan, in writing.

In operation, Salomon Smith Barney represents that the Automatic Reallocation Option will work as follows:

(a) The Consulting Group will release a modified version of the Allocation Model for the Plan account based upon its amended recommendation.

(b) On the day such modification is released, the Consulting Group will adjust the Plan account to fit the new Allocation Model and to reflect current market conditions.[6] Such adjustments will be effected through a series of purchases and redemptions of Portfolio shares to increase or decrease the relative investment in the various Portfolios by the Plan account.

(c) The reallocation of the Plan account will be effected on the same business day as the release of the new Allocation Model by the Consulting Group, except to the extent market conditions and orderly purchase and redemption procedures may delay such processing. For purposes of calculating the percentage changes in its asset allocation recommendation underlying the Automatic Reallocation Option for a Plan investor's account, the Consulting Group will use the net asset values at the close of business on the preceding trading day. However, the execution of trades to give effect to the changed percentages will occur on the next trading day at the then-current net asset values.

(d) Participants in the TRAK Program will receive trade confirmations of the reallocation transactions. In this regard, for all Plan investors other than Section 404(c) Plan accounts (i.e., 401(k) Plan accounts), Salomon Smith Barney will mail trade confirmations the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification will depend upon the notification provisions agreed to by the Plan recordkeeper.[7] For example, if the recordkeeper notifies Section 404(c) Plan participants (i.e., Independent Plan Fiduciaries) in writing after each trade, such participants will be notified of reallocation transactions in this manner. If, however, the recordkeeper notifies Section 404(c) Plan participants of trading activity in a quarterly statement, the reallocation activity would be included there.

In addition to the trade confirmations which Salomon Smith Barney will provide to all Plan investors except Section 404(c) Plans, disclosure of the reallocation transactions will appear in the next regular client statement. Such transactions will be reflected as a series of purchase and redemption transactions that will shift assets among the Portfolios in accordance with the Allocation Model as modified by the Consulting Group.

(e) If, however, the reallocation to be made in response to the Consulting Group's recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (e.g., a suggested increase in a 15 percent allocation to greater than 25 percent or a decrease of such 15 percent allocation to less than 5 percent), Salomon Smith Barney will not automatically adjust a Plan account. Under such circumstances, Salomon Smith Barney will send out a written notice (the Notice) to the Independent Plan Fiduciary for each affected Plan, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date).

(f) The Notice will be mailed with the presumption of delivery within three business days to permit timely notification and adequate response time for the Independent Plan Fiduciary. The Notice will instruct the fiduciary that he or she will need to do nothing if such fiduciary decides to have his or her Plan account automatically reallocated on the Effective Date. If, on the other hand, the Independent Plan Fiduciary does not wish to follow the Consulting Group's revised asset allocation recommendation, the Notice will instruct the Independent Plan Fiduciary to inform a Financial Consultant, in writing, at least 30 calendar days prior to the proposed Effective Date that the fiduciary wishes to ''opt out'' of the new Allocation Model.[8]

(g) If the Independent Plan Fiduciary ''opts out,'' his or her Plan account will not be changed on the Effective Date.

[6] Salomon Smith Barney notes that there are 12 standard Allocation Models and that two similarly-situated Plan participants who receive the same recommendation from the Consulting Group will receive the same reallocation.

[7] Under these circumstances, Salomon Smith Barney will advise the recordkeeper of the proposed reallocation of the account of a Section 404(c) Plan participant as soon as the Consulting Group has determined that a change to an asset allocation recommendation is going to be made. The communication may initially be made orally because the recordkeeper must then promptly modify its system to effect the necessary changes to a participant's account on the effective date of the new recommendation. The oral communication is customarily followed by a full written description of the changes within two business days of the verbal update.

As noted above, a Section 404(c) Plan participant who has elected the Automatic Reallocation Option would receive a trade confirmation from the recordkeeper of the resulting changes to the positions in his or her account, if that is the notification procedure agreed to for the Plan. Also as noted above, transactions occurring upon automatic reallocation and the underlying recommendation changes will be disclosed in the ''Participant Quarterly Review.''

[8] The Notice will be mailed with the presumption of delivery within three business days so that the 30 day calendar period will not commence until the third business day following the mailing. In addition, the Effective Date of the Automatic Reallocation Option will occur no sooner than the business day following the thirtieth calendar day. To avoid any misunderstandings or miscalculations by the Independent Plan Fiduciary, Salomon Smith Barney represents that it will conspicuously state, in the Notice, the last date for its receipt of the Independent Plan Fiduciary's written response.

Under such circumstances, the Allocation Model will remain at its current level or at such other level as the Independent Plan Fiduciary designates. However, the Automatic Reallocation Option, will remain in effect for future changes in such participant's Allocation Model.

(h) The Independent Plan Fiduciary will always have the ability to elect, terminate or reinstitute the Automatic Reallocation Option or to otherwise adjust an Allocation Model, in any way, by providing reasonably prompt notice to a Financial Consultant. Upon request by the Independent Plan Fiduciary, the Financial Consultant will send the appropriate form.

Salomon Smith Barney states that it is not possible to predict the frequency of reallocations because these changes are dictated by the Consulting Group's analysis of market conditions. However, since November 1991, Salomon Smith Barney represents that asset allocation changes of the type that would trigger automatic reallocations have been instituted by the Consulting Group on ten occasions. Eight of these changes were of a magnitude of 10 percentage points or less. The other two changes were 15 percent changes and impacted only approximately one percent and 3 percent, respectively, of the total number of clients participating in the TRAK Program at the time.[9]

Salomon Smith Barney also states that the reallocation called for under the Automatic Reallocation Option will be effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective Plan accounts. Because of the billing of Plan accounts participating in the TRAK Program is leveled with respect to the compensation received by Salomon Smith Barney and by the Financial Consultant involved in an account, Salomon Smith Barney states that the implementation of the Automatic Reallocation Option will be revenue-neutral. In addition, Salomon Smith Barney represents that neither the Plan nor the participants will pay any additional fees for electing to use the Automatic Reallocation Option.[10]

Thus, on the basis of the foregoing, General Condition II(f) has been revised to read as follows:

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that—

(1) If such Independent Plan Fiduciary shall have elected in writing (the Election), on a form designated by Salomon Smith Barney from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account will be automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election shall continue in effect until revoked or terminated by the Independent Plan Fiduciary, in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change would be adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (e.g., a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), Salomon Smith Barney will send out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation would be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies Salomon Smith Barney, in writing, at least 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model will remain at the current level, or at such other level as the Independent Plan Fiduciary then expressly designates, in writing. If the Independent Plan Fiduciary does not affirmatively ''opt out'' of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation will be automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary will receive a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (i.e., 401(k) Plan accounts), Salomon Smith Barney will mail trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification will depend upon the notification provisions agreed to by the Plan recordkeeper.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first class mail to the Independent Plan Fiduciary Plan of each Plan currently participating in the TRAK Program, or, in the case of a Section 404(c) Plan, to the recordholder of Trust shares. Such notice will be given within 15 days of the publication of the notice of pendency in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the

[9] While there is no minimum percentage threshold that will trigger the Automatic Reallocation Option, other than the historical ranges specified above, Salomon Smith Barney notes that there may be future market circumstances that may justify an asset allocation adjustment of a lesser amount. Because the Consulting Group will only adjust asset allocation recommendations to reflect current market conditions, Salomon Smith Barney anticipates that triggers for the Automatic Reallocation Option will continue to be only market-related. As is currently the situation, Salomon Smith Barney represents that a Plan investor may, at any time and for any reason, contact a Financial Consultant to request a modification of an existing Allocation Model.

[10] General Condition II(c) of PTE 94–50 as well as this proposal states that no Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust. Since the fees paid to Salomon Smith Barney are based upon net asset values of investments and not transactions, a change of investment allocations and the net purchases and redemptions used to effect such changes do not change the payable fees.

Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 92–77, as amended by PTE 94–50 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

A. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA), or a retirement plan for self-employed individuals (the Keogh Plan) [11] in the Trust for Consulting Group Capital Market Funds (the Trust), established by Salomon Smith Barney, in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service product (the TRAK Program).

B. If the exemption is granted, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, to the provision, by the Consulting Group, of (1) investment advisory services or (2) an automatic reallocation option (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.

This proposed exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program will be approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Salomon Smith Barney and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates will constitute no more than reasonable compensation.

(c) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares shall remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that—

(1) If such Independent Plan Fiduciary shall have elected in writing (the Election), on a form designated by Salomon Smith Barney from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account will be automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election shall continue in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change would be adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (e.g., a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), Salomon Smith Barney will send out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation would be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies Salomon Smith Barney, in writing, at least 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model will remain at the current level, or at such other level as the Independent Plan Fiduciary then expressly designates, in writing. If the Independent Plan Fiduciary does not affirmatively ''opt out'' of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation will be automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary will receive a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section

[11] The employee benefit plan, the IRA and the Keogh Plan are are collectively referred to herein as the Plans.

404(c) Plan accounts (i.e., 401(k) Plan accounts), Salomon Smith Barney will mail trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification will depend upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group will generally give investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Consulting Group will provide investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Salomon Smith Barney and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by Salomon Smith Barney and/or its affiliates, the percentage of that Portfolio's net assets invested in such securities will not exceed one percent.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and the Trust will retain no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares, (1) Each Plan will receive the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, Salomon Smith Barney and its subsidiaries and the compensation paid to such entities.[12]

(B) Upon written or oral request to Salomon Smith Barney, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan relating to participation in the TRAK Program and, if applicable, informing Plan investors of the Automatic Reallocation Option.

(D) Upon written request of Salomon Smith Barney, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of a Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a Salomon Smith Barney Financial Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of PTE 94–50 as well as the proposed exemption and the final exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this Section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary will be required to represent in writing to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report which will include financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing, Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants will meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that will enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of the (a) percentage of each Portfolio's brokerage commissions that are paid to Salomon Smith Barney and its affiliates and (b)

[12] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of fees and expenses to be paid by the Plan, including the fees paid directly to Salomon Smith Barney or to other third parties and/or indirectly through the Trust to Smith Barney.

the average brokerage commission per share paid by each Portfolio to Salomon Smith Barney and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than Salomon Smith Barney and its affiliates, both expressed as cents per share.

(m) Salomon Smith Barney shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Salomon Smith Barney and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Salomon Smith Barney shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (n) below.

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (n) shall be authorized to examine the trade secrets of Salomon Smith Barney or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Salomon Smith Barney'' means Salomon Smith Barney Inc. and any affiliate of Salomon Smith Barney, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Salomon Smith Barney includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Salomon Smith Barney. (For purposes of this subsection, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) An ''Independent Plan Fiduciary'' is a Plan fiduciary which is independent of Salomon Smith Barney and its affiliates and is either—

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under a self-directed IRA which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct the investment of assets of his or her account in such Plan.

Section IV. Effective Dates

If granted, this proposed exemption will be effective as of June 21, 1994 with respect to the transactions described in Section I.A. and B.(1). With respect to Section I.B.(2) and Section II(f)(1)–(4) of the General Conditions, this proposed exemption will be effective November 9, 1998.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTEs 92–77 and PTE 94–50, refer to the proposed exemptions and the grant notices which are cited above.

Signed at Washington, D.C., this 4th day of November, 1998.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–29964 Filed 11–6–98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–51; Exemption Application No. L–9583, et al.]

Grant of Individual Exemptions; U.S. West, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue

exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

U S WEST, Inc.; Located in Englewood, Colorado

[Prohibited Transaction Exemption 98–51; Application No. L–9583]

Exemption

Section I—Transactions Involving Contributions In-kind

Effective March 31, 1994, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to voluntary contributions in-kind by U S WEST, Inc., any successor to U S WEST, Inc., and/or any affiliates of U S WEST, Inc. (collectively, U S WEST) of certain shares of publicly traded common stock of U S WEST (the Stock) and/or any replacement publicly traded shares of such Stock to certain trusts (the Trusts or Trust) for the purpose of pre-funding welfare benefits under one or more employee welfare benefit plans (the Plan or Plans) maintained by U S WEST, provided that:

(a) The Plan provisions explicitly authorize U S WEST to pre-fund benefits through in-kind contributions of Stock, and all contributions of Stock have been and will be made in conformity with such Plan provisions;

(b) Neither the Plans nor the Trusts have paid nor will pay, whether in cash or in other property or in a diminution of any funding obligation of U S WEST, any consideration for Stock contributed in-kind by U S WEST;

(c) U S WEST has no obligation to pre-fund welfare benefits provided to participants under any of the Plans, either pursuant to the plan documents, the terms of any collective bargaining agreement, or the provisions of the Act;

(d) None of the Plans have ceded, nor will cede, any right to receive cash contributions from U S WEST;

(e) None of the Plans or Trusts have paid, nor will pay, any commissions in connection with the contribution in-kind of Stock by U S WEST; and

(f) Each of the conditions, as set forth below in Section II, have been satisfied and at all times will be satisfied.

Section II—Conditions

The exemption is conditioned upon the adherence by U S WEST to the material facts and representations described in the Notice of Proposed Exemption (the Notice) as modified by this exemption and upon satisfaction of the following requirements:

(a) All Stock contributed in-kind by U S WEST to any of the Trusts or acquired by such Trusts, as a result of the recapitalization of U S WEST, constituted qualifying employer securities (QES), as defined in section 407(d)(5) of the Act; and all Stock contributed in-kind in the future and any replacement publicly traded shares of such Stock will constitute QES;

(b) Stock contributed in-kind by U S WEST or acquired as a result of the recapitalization of U S WEST has been held in Trusts, which are qualified under section 501(c)(9) of the Code, and which are established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans, and all Stock contributed in-kind in the future and any replacement publicly traded shares of such Stock will be held in such Trusts;

(c) All Stock contributed in-kind by U S WEST to any Trust or acquired by any Trust as a result of the recapitalization of U S WEST has been held in a separate account (the Account or Accounts) under such Trust, and all Stock contributed in-kind in the future and any replacement publicly traded shares of such Stock will be held in an Account under such Trust. Such Accounts under a Trust have been and will be managed by an independent fiduciary (the I/F), who is an independent, qualified investment manager, or any successor independent, qualified investment manager, and who has represented and will represent the interests of the Plans which are funded by such Trust for all purposes with respect to the Stock for the duration of the Trust's holding of any of such Stock;

(d) The I/F of the Accounts in the Trusts which fund any welfare plan benefits, has accepted Stock from U S WEST, through in-kind contributions and recapitalization of U S WEST, and will accept Stock, through future in-kind contributions and through any replacement publicly traded shares of such Stock, only after such I/F determines at the time of the transactions that such transactions are feasible, in the interest of, and protective of participants and beneficiaries of the Plans funded by such Trusts;

(e) The I/F has had sole responsibility and, at all times, will have sole responsibility for the ongoing management of the Accounts under the Trusts which hold the Stock and has taken and will take whatever action is necessary to protect the rights of the Plans funded by such Trusts, including but not limited to all decisions regarding the acceptance of contributions in-kind by U S WEST, the sale or retention of such Stock, the exercise of voting rights of such Stock, and any other acquisition or dispositions of such Stock;

(f) Any contributions in-kind of Stock made by U S WEST to any Plan through any Trust and any acquisitions of Stock in connection with the recapitalization of U S WEST did not cause immediately after each such transaction, and in the future any contributions in-kind of Stock and any replacement publicly traded shares of such Stock will not cause immediately after each such transaction the aggregate fair market value of such Stock, plus the fair market value of all qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act, and the fair market value of all other QES held by such Plan to exceed 25 percent (25%) of the fair market value of the assets of such Plan as determined on the date of each such transaction;

(g) The percentage limitations, as set forth above in paragraph (f) of this Section II, have been and will be applied without regard to amounts of securities issued by U S WEST that may be held by an unrelated common or collective trust fund maintained by an independent manager in which any of the Plans through the Trusts may have invested or may invest, provided that the fair market value of the securities issued by U S WEST and held in such unrelated common or collective trust fund does not exceed 5 percent (5%) of the fair market value of each such common or collective trust fund; and provided further that the conditions of Prohibited Transaction Class Exemption 91–38 (PTCE 91–38) [1] are satisfied, including the requirement that the interests of the Plans in such unrelated common or collective trust fund does not exceed 10 percent (10%) of the total

[1] The Notice of Proposed Exemption for exemption application number D–8414 was published at 56 FR 4856 on February 6, 1991. PTCE 91–38 was granted at 56 FR 31966 on July 12, 1991.

of all assets in such common or collective trust fund;

(h) Nothing in the conditions, as set forth above in paragraph (f) of this Section II, shall preclude, the holding by any Plan of Stock, any other QES and QERP, in amounts in excess of 25 percent (25%) of the assets of such Plan, if the aggregate fair market value of such Stock, other QES and QERP exceeds 25 percent (25%) of the value of the assets of such Plan solely by reason of:

(1) A greater rate of appreciation to the value of such Stock, other QES and QERP relative to the rate of appreciation to the value of the assets in such Plan, other than the Stock, other QES and QERP; or

(2) A greater decline in the value of the other assets of the Plan relative to that of such Stock, other QES and QERP;

(i) None of the assets of any of the Trusts have reverted, nor at any time will any of the assets of such Trusts revert to the use or benefit of U S WEST.

EFFECTIVE DATE: The exemption is effective as of March 31, 1994.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within ninety (90) days of the date of the publication of the Notice in the **Federal Register** on March 31, 1998. All comments and requests for hearing were due by June 29, 1998.

During the comment period, the Department received two (2) requests for a hearing. The Department has taken into consideration the concerns expressed by the individuals who requested a hearing. After a review of these concerns, the Department does not believe that any issues have been raised which would require the convening of a hearing.

The Department received letters from thirty-five (35) interested persons commenting on the subject transaction. At the close of the comment period, the Department forwarded copies of these letters to the applicant and requested that the applicant address in writing the various concerns raised by the commentators. Most of the comments fell into broad categories that the applicant responded to generally. Where a single commentator raised a specific issue, such issue was responded to individually. A description of the comments and the applicant's responses thereto are summarized below.

The applicant noted that several commentators objected to the granting of the requested exemption based on the belief that the assets of the Plans, the assets of U S WEST Pension Plan, or the assets of retirees would be used to purchase QES. In this regard, the applicant reiterated that the exemption would permit the voluntary contribution of QES by the applicant or its affiliates. Thus, it is represented that the cost of the QES contributed to the Trusts has been and will be borne solely by U S WEST. No assets of the Plans, of the U S WEST Pension Plan, or of the retirees has been or will be used to pay for the QES, nor have the Trusts ceded nor will the Trusts cede any right to receive cash contributions in exchange for the contribution by U S WEST of the QES.

Three (3) commentators expressed identical beliefs that the applicant should be required to contribute to the Trusts the cash which the applicant's affiliate, U S WEST Communications (USWC) receives from its telephone service customers (the Rate Payers), and which is attributable to the expense borne by the Rate Payers as a result of the cost of the Plans being passed along to the Rate Payers in the state rate making procedures. The three commentators that raised the rate making issue were from Arizona, which the applicant maintains does not permit accrued expenses for post-retirement welfare benefits to be taken into account for purposes of setting the rates charged by USWC in that state.

Notwithstanding the circumstances in Arizona, and in the interest of ensuring a complete response to the issues raised, the applicant considered the comments in light of each of the fourteen (14) states served by USWC. In this regard, it is represented that until recently accrued expenses for future post-retirement welfare benefits could not be included in the calculation of cost of service for rate making purposes. Instead, such expenses could be included in cost of service calculations only to the extent they were paid out in the form of benefits. Following the adoption by the Financial Accounting Standards Board of Financial Accounting Standard 106 (FAS 106) in 1990, most state regulatory jurisdictions in which USWC does business have begun permitting utilities to use some type of accrual method similar to that provided in FAS 106 for recognizing post-retirement welfare benefit expenses in the cost of service. These accrued expenses are not automatically included in rates but may be included at the request of USWC.

As part of the procedure for determining the extent to which accrued post-retirement welfare benefit expenses should be included in rates, many jurisdictions consider how these expenses are funded through trusts or other means, and certain states require U S WEST to maintain a specified minimum level of funding for benefits in one or more external accounts (*i.e.* trust accounts). More specifically, some of the states served by USWC may require a certain level of funding of benefits be designated as funded by that state's utility customers. In this regard, the applicant represents that no part of U S WEST's two prior contributions of QES was attributable to funding these designations. In the future, even if the applicant chooses to make an additional contribution attributable to a particular state's Rate Payers, rather than choose other alternatives, New U S WEST is able to ensure that no part of such contribution will consist of QES, and accordingly will do so.

The three commentators who raised the rate structuring issues, discussed in the paragraphs above, also suggested that the Stock should be discounted to protect the Plans against the potential loss of value over time. In the opinion of the applicant the intent of the commentators in making this suggestion is unclear, inasmuch as Plans are not paying for the Stock contributed by U S WEST, and the financial reporting standards of the Act require plan assets to be reported at fair market value.

Several commentators objected to permitting the Plans to invest more than the statutory limit (10%) in QES. Some of these commentators expressed their concern that the holding by the Plans of QES in excess of the statutory limit would reduce the security of Plan benefits (*e.g.* by exposing the Plans to volatility in Stock prices). In response, the applicant points out that welfare benefits under the Plans are not intended to be fully pre-funded, and that the voluntary contributions of Stock do not replace any required cash contributions of U S WEST. The applicant notes that no business purpose would be served if U S WEST were to contribute Stock that is expected to decline in value, because the cost of any benefits that are not pre-funded remain a liability of U S WEST. Accordingly, in the opinion of the applicant the exemption is in the interest of the participants and beneficiaries of the Plans in that U S WEST will be encouraged to make voluntary contributions to the Plans that would not otherwise be made.

Finally, several commentators expressed concern that the proposed exemption would affect their benefits under the Plans or their benefits under the U S WEST Pension Plan. In response, the applicant represents that the exemption will have no impact on these benefits. Further, one

commentator noted that the applicant has made certain promises relating to the continuation of benefits to persons who retired prior to 1991. With respect to such promises, the applicant represents that it intends neither to enlarge nor to reduce the scope of its obligations by any representations made in connection with the requested exemption.

In addition to the comments described above, in letters dated June 29, August 10, 1998, September 17, and September 23, 1998, the Department also received comments and additional information from the applicant. In these submissions, the applicant requested certain modifications to the exemption as proposed, provided documentation for such modifications, and informed the Department of certain clarifications and changes in the Summary of Facts and Representations (SFR) in the Notice. The applicant's comments fall into four (4) categories: (1) clarification of the purpose of the contribution; (2) the application of limits on the acquisition and holding of QES; (3) information on the separation of U S WEST; and (4) the impact of such separation on the requested exemption.

With respect to category 1, above, regarding the purpose of the contribution, the applicant has requested confirmation of its interpretation of the language in Section I of the Notice. In this regard, Section I states that the contribution by U S WEST of Stock to the Trusts was ''for the purpose of pre-funding post-retirement welfare benefits'' under the Plans. In its comment, the applicant expressed its understanding that the exemption would not require Stock or any other specific asset contributed to a Trust to be used *solely* for the provision of post-retirement welfare benefits. In this regard, the applicant notes that where a Plan provides benefits to retirees, as well as to active employees, and such Plan holds an interest in a Trust, the terms of such Trust would permit the use of plan assets held in the Trust to pay benefits on behalf of either group, to the extent that such assets are not segregated for tax and accounting purposes for one or the other group. The Department concurs in the understanding, as expressed by the applicant, and has deleted the words, ''post-retirement,'' from the language in Section I of the exemption.

With respect to category 2, above, regarding issues associated with the application of limits on the acquisition and holding of QES, the applicant has requested a modification of the language of Section III (f) of the Notice. In this regard, Section III (f) states that:

> any contributions in-kind of Stock made by U S WEST to any Trust, any acquisitions of Stock in connection with the recapitalization of U S WEST, did not cause immediately after each such transaction, and in the future any contributions in-kind of Stock, any replacement publicly traded shares of such Stock or any Stock purchases in connection with rebalancing of a Trust's holding of Stock will not cause immediately after each such transaction the aggregate fair market value of such Stock, plus the fair market value of all qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act, and the fair market value of all other QES held by such Trust to exceed 25 percent (25%) of the fair market value of the assets of such Trust as determined on the date of each such transaction.

In the opinion of the applicant the 25 percent limitation (the 25% Limitation) should be calculated at the Plan level, rather than at the Trust level. In this regard, the applicant believes that applying the 25% Limitation at the Plan level would ensure consistency with the method of accounting required under the reporting rules of the Act, and that the primary impact of applying the 25% Limitation at the Trust level would be that fewer voluntary contributions would be made to the trusts, specifically, to the U S WEST Occupational Welfare Benefit Trust (formerly the U S WEST Benefit Assurance Trust) (the Assurance Trust). Further, the applicant points out that if the final exemption were revised to provide for calculation of the 25% Limitation at the Plan level, rather than at the Trust level, the assets of the Assurance Trust that could be invested in QES would not significantly exceed 25 percent (25%) of the asset of such trust.

In support of its position, the applicant represents that the value of each Plan's interest in each Trust can be measured. In addition, the applicant represents that each Plan holds a proportionate interest in each Trust asset (that is, a Plan's interest in each Trust asset, is the same as such Plan's interest in the Trust as a whole). Because each Plan can account for its interest in the Trust and holds an undivided interest in each of the underlying assets of the Trust in the same proportion as its interest in the Trust as a whole, it is represented that each Plan's interest in a particular asset, including the Stock, can be readily determined. Because a single Plan's benefits may be funded under more than one Trust, the applicant believes that applying the 25% Limitation at the Plan level would provide a more useful and accurate measurement of each Plan's interest in the Stock.

Further, it is represented that where a single Trust funds the benefits of more than one Plan, the assets attributable to each Plan are identifiable. The applicant represents that this is achieved either by commingling plan assets for investment purposes and attributing a *pro rata* share of each asset in the commingled Account to each Plan participating in the Trust, or by establishing one or more separate investment management Accounts solely on behalf of a plan participating in the Trust, or by combining both approaches. In this regard, it is represented that a Trust that funds benefits under more than one Plan functions as a ''master trust.'' Moreover, when assets of a Plan are utilized to pay benefits, the liquidation of the assets attributable to the benefit paying Plan funded under a Trust will not affect the assets of any other Plan funded under such Trust. Once U S WEST has determined that benefits are to be paid for a Plan from the assets in an Account that holds QES, then the Independent Fiduciary of such Account continues to be responsible for the allocation as between QES or cash equivalents in funding the benefit payment.

The Department has decided that it is in the interests of the participants and beneficiaries whose Plan benefits are funded in whole or in part by the assets in the Accounts under the Trusts, if the 25% Limitation is imposed on the Plan level. This decision is based on the representations of the applicant, as discussed in the paragraph above, and on the fact that all Stock contributed in-kind by U S WEST in the past or in the future to any Accounts under such Trusts have been and will be managed by an I/F who has had and, at all times, will have sole responsibility for the ongoing management of the Accounts under the Trusts which hold the Stock and has taken and will take whatever action is necessary to protect the rights of the Plans funded by such Trusts, including but not limited to all decisions regarding the acquisition, retention, or disposition of such Stock. Accordingly, the Department concurs with the applicant's request to modify the language, as set forth in Section III(f) of the Notice. However, the Department notes that Section III(f), has been renumbered in the final exemption, as Section II(f) which reads as follows:

> any contributions in-kind of Stock made by U S WEST to any Plan through any Trust and any acquisitions of Stock in connection with the recapitalization of U S WEST did not cause immediately after each such transaction, and in the future any contributions in-kind of Stock and any replacement publicly traded shares of such

Stock will not cause immediately after each such transaction the aggregate fair market value of such Stock, plus the fair market value of all qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act, and the fair market value of all other QES held by such Plan to exceed 25 percent (25%) of the fair market value of the assets of such Plan as determined on the date of each such transaction.

In addition, the Department notes that reference was made in the language of Section III(h), as set forth in the Notice, to the application, under certain conditions, of the 25% Limitation to the Trust level. In order to maintain consistency throughout the exemption the Department has renumbered Section III(h), as Section II(h) and has substituted the word, ''Plan,'' wherever the word, ''Trust,'' appears in the language of Section II(h). Accordingly, the language of Section II(h) reads as follows:

nothing in the conditions, as set forth above in paragraph (f) of this Section II, shall preclude, the holding by any Plan of Stock, any other QES and QERP, in amounts in excess of 25 percent (25%) of the assets of such Plan, if the aggregate fair market value of such Stock, other QES and QERP exceeds 25 percent (25%) of the value of the assets of such Plan solely by reason of:

(1) a greater rate of appreciation to the value of such Stock, other QES and QERP relative to the rate of appreciation to the value of the assets in such Plan, other than the Stock, other QES and QERP; or

(2) a greater decline in the value of the other assets of the Plan relative to that of such Stock, other QES and QERP.

With respect to category 3, above, regarding information relating to the separation of U S WEST, the applicant informed the Department that the Board of Directors of U S WEST, on April 20, 1998, submitted for shareholder approval a proposal under which U S WEST would be separated into two (2) independent companies. In this regard, pursuant to the terms of the separation, those parts of the business representing U S WEST Communications Group (the Communications Group) and U S WEST's directory services (DEX) would be known as U S WEST, Inc. (New U S WEST), and those parts of the business representing U S WEST Media Group (the Media Group) would be known as MediaOne Group, Inc. (MediaOne). It is represented that the terms of the separation were approved for fairness by two (2) independent investment banking firms, and that the opinions of these firms were provided to all shareholders of U S WEST. On June 4, 1998, shareholders of U S WEST approved the proposal to separate U S WEST, effective June 12, 1998. It is represented that after the separation of U S WEST, there is no ownership or management relationship between New U S WEST and MediaOne (other than the fact that shareholders may choose to hold shares issued by both companies).

Prior to the separation of U S WEST, the different lines of business engaged in by U S WEST through its subsidiaries were reflected in two (2) classes of stock, ''C'' shares and ''M'' shares (the ''C'' Shares and the ''M'' Shares). The ''C'' Shares represented the Communications Group's business involving integrated communications, entertainment, information and transactions services. The ''M'' Shares reflected the Media Group's business involving cable, wireless, directory, interactive and international services.

To effect the separation of U S WEST, it is represented that the businesses of the Communications Group and DEX were contributed to New U S WEST, and stock of New U S WEST was distributed to the holders of ''C'' Shares. It is represented that the ''M'' Shares continue to reflect the business of the Media Group which after the separation of U S WEST is engaged in by MediaOne. No additional shares were distributed to the holders of ''M'' shares, other than $850 million shares of New U S WEST stock that such holders received as compensation for the transfer of DEX from the Media Group to New U S WEST.

The Department acknowledges the separation of U S WEST into New U S WEST and MediaOne, as described by the applicant, and notes that this information has been included in the record of the exemption. For a more detailed description of the circumstances preceding the separation of U S WEST and/or a description of the steps taken to effect such separation, interested persons are encouraged to obtain a copy of the exemption application file (L–9583) which is available in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

With respect to category 4, above, it is represented that the separation of U S WEST into two distinct companies did not have an impact on the holding of the Stock contributed in-kind by U S WEST to the Assurance Trust, on March 1994, and again on March 1995. In this regard, the applicant represents that such Stock was not affected by the separation of U S WEST on June 12, 1998, because such Stock had already been sold out of the Assurance Trust by December 31, 1997. Further, it is represented that the cash proceeds from sales of ''C'' Shares or the ''M'' Shares were not used to purchase shares of Stock in connection with ''rebalancing'' the portfolio of ''C'' Shares and ''M'' Shares by the Assurance Trust. Accordingly, the applicant represents that the transactions, as described in Section II of the Notice and in the SFR, have not occurred and will not occur, such that relief will no longer be necessary, either on a retroactive or prospective basis. Accordingly, the applicant does not object to the removal in its entirety of Section II of the Notice from the final exemption.

The Department concurs with the applicant, has deleted Section II from the exemption, and has renumbered the former Section III, as Section II in the final exemption. In addition, the Department has deleted any reference to transactions involving ''rebalancing'' of a Trust's holding of Stock from the terms and conditions of the final exemption.

The separation of U S WEST into two distinct companies did cause changes in the employee welfare benefit plans sponsored by each company. In this regard, because MediaOne and New U S WEST are not affiliated, it is no longer possible to cover employees of each company under the same welfare benefit plan. Accordingly, it is represented that the respective boards of directors of each company have determined that New U S WEST will adopt the Plans previously maintained by U S WEST (the New U S WEST Plans), and that MediaOne will establish ''mirror'' welfare benefit plans (the MediaOne Plans) on behalf of the former employees of U S WEST who transferred to MediaOne. It is anticipated the welfare benefit plans maintained by New U S WEST and MediaOne, respectively, will provide the same benefits provided by the Plans maintained by U S WEST. In this regard, it is represented that the operation and administration of the welfare benefit plans and trusts maintained by New U S WEST and MediaOne will be the same in all material respects to the operation and administration of Plans and the Trusts established by U S WEST. It is further represented that the welfare benefits provided to employees of New U S WEST and MediaOne will have the same level of funding protection that such employees had prior to the separation of U S WEST. Each company will reserve the same right to amend or terminate, respectively, the New U S WEST Plans and the MediaOne Plans, as was reserved by U S WEST with respect to the Plans it sponsored. As described in the Notice, in order to pre-fund a portion of the welfare benefits provided under the Plans, U S WEST established

under section 501(c)(9) of the Code, three Trusts: (1) the Assurance Trust, (2) the U S WEST Management Benefit Assurance Trust (the Management Trust), and (3) the U S WEST Life Insurance and Welfare Trust (the Life Insurance Trust). In its comment, the applicant informed the Department of the effect of the separation of U S WEST on these three Trust and on a fourth trust, the U S WEST VEBA Trust (the VEBA Trust), maintained by U S WEST, pursuant to section 501(c)(9) of the Code, to provide short-term funding of health care benefits for any of the Plans.

In this regard, it is represented that, effective with the separation of U S WEST, New U S WEST adopted the Assurance Trust, the Management Trust, and the Life Insurance Trust to provide funding for the New U S WEST Plans, while MediaOne has adopted the VEBA Trust. Further, New U S WEST has transferred a proportionate share of the assets and liabilities of the Management Trust and the Life Insurance Trust to the VEBA Trust for the purpose of funding the MediaOne Plans. In addition, the applicant has represented that no assets of the Assurance Trust were transferred to the VEBA Trust, because the assets of the Assurance Trust are held solely on behalf employees covered under collective bargaining agreements, and none of these employees are employed by MediaOne.

Notwithstanding the changes caused by the separation of U S WEST, as described in the paragraphs above, New U S WEST and MediaOne have requested that the final exemption continue to be available prospectively to both companies; provided certain conditions are satisfied. It is represented that the conditions of the exemption will ensure that the rights of participants and beneficiaries of the New U S WEST Plan and the MediaOne Plan will be protected. In this regard, New U S WEST and MediaOne each confirm that the Department may rely on representations made in the exemption application and incorporated in the Notice, subject to those modifications necessarily resulting from the separation of U S WEST, as described herein. Specifically, New U S WEST and MediaOne have omitted representations (b) and (c) in paragraph 12 of the SFR in the Notice, because such conditions relate solely to the ''rebalancing'' transactions for which exemptive relief is no longer requested or required.

New U S WEST and MediaOne believe that it would be in the interest of participants of the welfare benefit plans sponsored respectively by each company to continue to receive contributions of QES. In support of this request, it is represented that the reasons that additional voluntary contribution of QES are in the best interest of participants are completely unchanged. In this regard, it is represented that the operation and administration of the welfare benefit plans and trusts that will be maintained respectively by New U S WEST and MediaOne ''mirror'' the terms of the Plans in existence prior to the separation of U S WEST. Further, it is represented that the level of protection afforded to participants and beneficiaries in the New U S WEST Plans and the MediaOne Plans will be unaffected, in that voluntary contributions of QES will permit a higher level of contributions and will provide greater security that assets will be available to fund future benefits.

Finally, the applicant argues that the separation of U S WEST into two (2) lines of business should not necessitate the filing of another application for exemption, as such a filing would only duplicate the information that has already been provided to the Department. Similarly, it is represented that a separate exemption application would not serve to provide notice to additional interested persons, because all persons who would be interested in such application have already been notified by the publication of Notice in the **Federal Register**.

The Department concurs that the exemption will cover future contributions in-kind of QES by New U S WEST, and accordingly, has altered Section I of the exemption by adding the italicized words to the language of Section I, as follows,

Effective March 31, 1994, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to voluntary contributions in-kind by U S WEST, Inc., *any successor to U S WEST, Inc.*, and/or any affiliates *of U S WEST, Inc.* (*collectively*, U S WEST) of certain shares of publicly traded common stock of U S WEST (the Stock) and/or any replacement publicly traded shares of such Stock to certain trusts (the Trusts or Trust) for the purpose of pre-funding post-retirement welfare benefits under one or more employee welfare benefit plans (the Plan or Plans) maintained by U S WEST.

However, with regard to the request that the exemption continue to be available prospectively to MediaOne, the Department does not believe that the Notice, as published in the **Federal Register**, contemplated future contributions in-kind of QES by MediaOne to the MediaOne Plans. In this regard, the Department notes that the MediaOne Plans are new ''mirror'' plans which were not in existence at the time of the publication of the Notice in the **Federal Register**. Further, the Department is not convinced that the notice to interested persons that was provided with regard to the exemption requested by U S WEST afforded sufficient opportunity for comment from persons who would be interested persons with regard to future transactions by MediaOne. As a result, the Department does not believe that the exemption can be interpreted to be available prospectively to MediaOne. MediaOne may submit another application for exemption relief should MediaOne wish to make voluntary in-kind contributions of QES in the future to MediaOne Plans.

Accordingly, after full consideration and review of the entire record, including the written comments, the Department has determined to grant the exemption, as modified and amended herein. The comments submitted by the commentators to the Department and the applicant's response thereto has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 31, 1998, 61 FR 15443.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

RREEF America L.L.C. (RREEF); Located in San Francisco, California

[Prohibited Transaction Exemption 98–52; Exemption Application No. D–9952]

Exemption

The Department is granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)

Section I—Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason

of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(1) The provision of certain leasing services (the Leasing Services) by RREEF's leasing affiliates (the Leasing Affiliates, as defined in Section IV) to certain accounts established by RREEF (the Accounts, as defined in Section IV); and

(2) The payment of leasing commissions in connection with the provision of Leasing Services by the Leasing Affiliates to the Accounts; provided that the conditions set forth in Section II are met.

Section II—Conditions

(1) The arrangement under which the Leasing Services are performed with respect to any Account is subject to the prior authorization of either (i) an independent plan fiduciary for each employee benefit plan or other plan for which RREEF serves as trustee or investment manager (a Client Plan) that invests in a Single Client Account, or (ii) independent plan fiduciaries with respect to Client Plans or other institutional investors holding at least 60 percent of the units of beneficial interest in a Multiple Client Account, following disclosure of information in the manner described in paragraph (2) below. In the case of a Client Plan whose assets are proposed to be invested in an Account subsequent to the provision of Leasing Services to the Account, the Client Plan's investment in the Account is subject to the prior written authorization of an authorizing plan fiduciary following disclosure of the information described in paragraph (2).

(2) Not less than 45 days prior to the first date it proposes to provide Leasing Services for any Account, RREEF, as investment manager, shall furnish the authorizing plan fiduciary with any reasonably available information which RREEF believes to be necessary to determine whether such approval should be given, as well as such information which is reasonably requested by the authorizing plan fiduciary. Such information will include: (a) a description of the Leasing Services to be performed by the Leasing Affiliate; (b) an explanation of the potential conflicts of interest involved in selecting the Leasing Affiliate; (c) an explanation of the selection process (including the role of the Independent Fiduciaries (as defined in Section IV)); (d) identification of properties for which Leasing Services will be required; (e) an estimate of the leasing fees to be paid to the Leasing Affiliate if it is selected to provide such services; and (f) a description of the terms upon which a Client Plan may withdraw from an Account.

(3) In the event an authorizing plan fiduciary of any Client Plan whose assets are invested in an Account submits a notice in writing to RREEF, as investment manager, at least 15 days prior to the provision of Leasing Services, objecting to the provision of the Leasing Services, and RREEF proposes to proceed with the provision of Leasing Services, the Client Plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Account, without penalty. With the exception of a Client Plan which has invested in a closed-end Account under which the rights of withdrawal from the Account may be limited, as provided in the Client Plan's written agreement to invest in the Account, if a written objection to the Leasing Services is submitted to RREEF any time after 15 days prior to implementation of the Leasing Services (or after implementation), the Client Plan must be able to withdraw without penalty, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing and the non-withdrawing Client Plans. However, the Leasing Affiliate need not discontinue providing the Leasing Services, once implemented, by reason of a Client Plan electing to withdraw after 15 days prior to the scheduled implementation date of the Leasing Services. Any Client Plan which invests in a Single Client Account may terminate the Leasing Services arrangement and withdraw from the Account at any time (upon reasonable written notice).

(4)(a) RREEF shall furnish the Independent Fiduciary (as defined in section IV) acting on behalf of the Client Plans participating in the Account with an annual report (the RREEF Annual Report) containing the information described in this paragraph, not less frequently than once a year and not later than 45 days following the end of the period to which the report relates. The RREEF Annual Report shall disclose the total of all fees incurred by the Account during the preceding year under contracts with RREEF and its affiliates and shall include a description of all leasing activities with respect to each property under the responsibility of the Independent Fiduciary for which a Leasing Affiliate provides services, including marketing/advertising activities, leases under negotiation, lease offers rejected (and why), and such other information as shall be reasonably requested by the Independent Fiduciary. The RREEF Annual Report shall also delineate the leasing commissions that are anticipated to be paid to RREEF and its affiliates in the coming year for services provided by these entities in connection with the properties held by the Account. The RREEF Annual Report will contain a description of a method for the termination of the leasing arrangement (see Section II(5)) by the Independent Fiduciary and/or by investing Client Plans in each Account.

(b) The Independent Fiduciary shall furnish RREEF and the authorizing plan fiduciaries with an annual report (the I/F Annual Report), within 90 days following the end of the period to which the report relates, summarizing its activities for the year, indicating its opinion as to the continued validity of the leasing guidelines with respect to any property for the next year, and recommending any amendments to, or termination of, the leasing agreement with the Leasing Affiliate. The I/F Annual Report will contain a description of a method for the termination of the leasing arrangement with the Leasing Affiliate and for the confirmation and/or removal of the Independent Fiduciary by the Client Plans investing in the Accounts.

(c) RREEF implements procedures to ensure each authorizing plan fiduciary of a Client Plan investing either in a Multiple Client Account, or a Single Client Account, has an opportunity to vote on the reconfirmation of the Independent Fiduciary on an annual basis. These procedures require that the Independent Fiduciary: (i) provide each authorizing independent client plan fiduciary with a ballot[2] by certified mail (or another method of delivery pursuant to which confirmation of receipt is provided), with the ballot instructions that direct the authorizing independent client plan fiduciary to return the ballot to RREEF; (ii) ensure that the ballot clearly indicates that the authorizing plan fiduciary may vote for or against continuation of the Independent Fiduciary; (iii) ensure that the ballot must be accompanied by a statement that failure to return the ballot within 45 days following the independent plan fiduciaries' receipt of the ballots will be counted as a ''for'' vote (unless holders of a majority of the units of beneficial interests in the Accounts have voted against reconfirmation); and (iv) 30 days after the Independent Fiduciary mails the ballot to the authorizing plan fiduciary, RREEF must make at least one follow-up contact with the authorizing plan fiduciary that has not previously

[2] RREEF will direct the Independent Fiduciary as to the specific form of a ballot. The applicant represents that for a Single Client Account, this will not be a ''ballot'', but a ''direction'' form.

returned the ballot prior to treating the unreturned ballot as a ''for'' vote. If RREEF does not receive a response from the authorizing plan fiduciary within 15 days after initiating contact with the authorizing plan fiduciary, RREEF may treat the unreturned ballot as a vote for reconfirmation. The reconfirmation will become effective on the earlier of the date affirmative ballots are obtained from the holders of a majority of the units of beneficial interests in the Accounts, or 45 days following the authorizing plan fiduciaries' receipt of the ballots (unless holders of a majority of the units of beneficial interests in the Accounts have voted against reconfirmation.)

(d) The Independent Fiduciary receives confirmation, and certifies to RREEF that the notice and the ballots sent to the authorizing plan fiduciary pursuant to subparagraphs (b) and (c) regarding the continued retention of the Independent Fiduciary and RREEF have been received by the authorizing plan fiduciary. The method used to confirm notice to the authorizing plan fiduciaries must be sufficient to ensure that the authorizing Client Plan fiduciaries actually receive notice. In all cases, return receipt for certified mail, printed confirmation of facsimile transmissions and manifest or computer data entries of independent courier services will be considered acceptable methods of confirming receipt.

(5)(a) The leasing agreement for any property may also be terminated or modified at any time at the written direction of the Independent Fiduciary, and may be terminated by a vote in favor of such termination by the holders of a majority of the units of beneficial interests in the Account (or such greater percentage, not to exceed 60 percent, as shall be set out in the agreements establishing the Account). Further, any Client Plan which invests in a Single Client Account may terminate the Leasing Services arrangement and withdraw from the Account at any time (upon reasonable notice).

(b) In the event of a vote to terminate the Leasing Services arrangement pursuant to paragraph (4)(c) or (5)(a), RREEF shall cease submitting to the Independent Fiduciary any new proposals to engage in covered transactions and RREEF will not renew or extend any covered transactions. Moreover, within 180 days after the vote of the Account holders, RREEF shall cease engaging in any existing covered transactions.

(6)(a) Each Leasing Services agreement shall be in writing and shall be reviewed at least annually and approved by an Independent Fiduciary. However, prior to proposing a transaction to the Independent Fiduciary, RREEF will first determine that such transaction is in the best interest of the Account.

(b) The Independent Fiduciary shall negotiate each Leasing Services agreement. The Independent Fiduciary shall also consider the cost to the Account of such fiduciary's involvement in connection with its consideration of whether to approve a particular Leasing Services agreement.

(c) Each leasing agreement and the performance of the Leasing Affiliate under such agreement shall be reviewed at least annually by the Independent Fiduciary, who shall instruct RREEF of any action which should be taken by RREEF on behalf of the Account with respect to the continuation, termination or other exercise of rights available to the Account under the terms of the leasing agreement. RREEF will carry out such instruction from the Independent Fiduciary to the extent it is legal and permitted by the terms of the leasing agreement.

(d) In the case of any emergency circumstances, RREEF or the Leasing Affiliates may provide Leasing Services to an Account for a period not exceeding 90 days without entering into a Leasing Services agreement, but no compensation may be paid by an Account for such services without prior approval of the Independent Fiduciary.

(7) If RREEF holds Account properties, and any RREEF affiliate or principal holds for its own account any properties in the same real estate market during a period when there is leasing competition between those properties, RREEF will hire, during such period, a third party leasing agent for Account properties.

(8)(a) RREEF shall furnish the Independent Fiduciary with any reasonably available information which RREEF reasonably believes to be necessary or which the Independent Fiduciary shall reasonably request to determine whether such approval of the transactions described above should be given, or to accomplish the Independent Fiduciary's periodic reviews of RREEF's performance under such agreements.

(b) With respect to RREEF, such information will include: a description of the Leasing Services for the Account and the Client Plans investing therein; the qualifications of RREEF to do the job; a statement, supported by appropriate factual representations, of the reasons for RREEF's belief that RREEF is qualified to provide the services; a copy of the proposed Leasing Services agreement and the terms on which RREEF would provide the services; the reasons why RREEF believes the retention of RREEF would be in the best interest of the Account; information demonstrating why the fees and other terms of the arrangement are reasonable and comparable to the fees customarily charged by similar firms for similar services in comparable locales; the identities of non-affiliated service providers and the terms under which these service providers might perform the services; and whether any RREEF affiliate is a property manager to any properties that are in competition for tenants with the property for which RREEF is under consideration.

(9) Any Independent Fiduciary may be removed at any time by a vote of holders of a majority of the units of beneficial interests in an Account. In the event of the removal of an Independent Fiduciary, existing leasing agreements overseen by that Independent Fiduciary will not be affected; however, RREEF will designate a replacement Independent Fiduciary within sixty (60) days.

(10) Seventy-five percent (75%) or more of the units of beneficial interests in a Multiple Client Account must be held by Client Plans or other investors having total assets of at least $100 million. In addition, 50 percent (50%) or more of the Client Plans investing in a Multiple Client Account must have assets of at least $100 million. A group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of $100 million.

(11) No Client Plan covering employees of RREEF will be invested in an Account.

(12) Not more than 20 percent of the assets of any Client Plan on whose behalf RREEF proposes to provide Leasing Services can be invested in RREEF Accounts.

(13) At the time any leasing agreement is entered into, the terms of the agreement must be at least as favorable to the Account as the terms of an arm's-length transaction between unrelated parties. In addition, the compensation paid to the Leasing Affiliate for Leasing Services by any Account must not exceed the amount paid in an arm's-length transaction between unrelated parties for comparable properties in similar locales. In any event, such

compensation will not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act and regulation 29 CFR 2550.408b–2. (The Independent Fiduciary must certify that an economic advantage to the Accounts exists before consummation of any leasing agreement).

(14)(a) Within one-year of the grant of this exemption, and after the beginning of each subsequent five-year period, each Independent Fiduciary will prepare with the assistance of RREEF a survey of leasing fees for the properties that have similar geographic location and property types to those held by the Accounts for which the Independent Fiduciary is responsible. The survey will include data regarding the fees that have been charged to the Accounts by several firms that are unaffiliated with RREEF for Leasing Services during the one-year period prior to the beginning of the new five-year period. Also, the survey will include data as to the fees paid by RREEF for such services performed for the properties not held by the Accounts during the same period and other market data regarding the cost of Leasing Services by geographic location and property types.

(b) Based upon its survey and its professional resources and expertise, the Independent Fiduciary will determine a typical range of annual fees for Leasing Services for the Accounts. The average of the range, as determined from such survey, will serve as the basis of comparison for determining for the next five-year period whether continuation of the Leasing Services policy has provided cost savings or other benefits to the Accounts.

(c) RREEF will demonstrate to the Independent Fiduciary at the end of the applicable five-year period that leasing fees charged to each Account by RREEF or its affiliates, plus the cost of the services of the Independent Fiduciary under the exemption that are allocated to the Accounts, are less than the fees that would have been charged using the benchmark rate established at the beginning of the five-year period. In making its determinations, the Independent Fiduciary shall take into account, to the extent it deems necessary, property management fees paid by the Accounts to RREEF and its affiliates.[3]

(d) The Independent Fiduciary will review the data supplied by RREEF and, to the extent considered necessary by the Independent Fiduciary, data collected from the Independent Fiduciary's own surveys, and will document its findings and analysis of such cost savings in a report to be delivered to each of the Client Plans participating in the Accounts within 90 days after the end of the five-year period and each subsequent five-year period and prior to the implementation of the annual confirmation procedure described in paragraph (6) of Section II with respect to such period. In the event the Independent Fiduciary finds that cost savings have not been achieved for the Accounts, it will not approve any additional services arrangements until RREEF and its affiliates have demonstrated to the satisfaction of the Independent Fiduciary that policies intended to assure cost savings to the Accounts have been implemented by RREEF and its affiliates. The survey, the Independent Fiduciary's report reviewing the survey, and the final report of the Independent Fiduciary analyzing whether cost savings had been achieved during the five-year period to which the survey relates, will be maintained by RREEF in accordance with the recordkeeping requirements of Section III.

(15) The fees paid to RREEF and/or its affiliates for Leasing Services provided in connection with a property held for an Account shall not exceed: (a) 7 percent of the lease amount for new leases; (b) 2 percent of the lease amount for renewal leases; and (c) for leases in which outside brokers are involved, 2.75 percent of the lease amount.

(16) Before entering into any leasing arrangement pursuant to the terms of this exemption, copies of the proposed exemption and the final exemption will be delivered to each Client Plan for which RREEF or its affiliate propose to perform Leasing Services as described herein.

Section III—Recordkeeping

(1) RREEF and any Leasing Affiliate will maintain, for a period of six years, the relevant records necessary to enable the persons described in paragraph (2) of this Section III to determine whether the conditions of this exemption have been met. Included in these records will be the written records of the Independent Fiduciary which had been periodically furnished by the Independent Fiduciary to RREEF, and the records described in paragraph (14) of Section II. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond RREEF's, the Leasing Affiliate's, or the Independent Fiduciary's control, the records are lost or destroyed prior to the end of the six-year period.[4]

(2)(a) Except as provided in subsection (b) of this paragraph and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (1) of this section shall be unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a Client Plan who has authority to acquire or dispose of the interests of the Client Plan in the Accounts or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any Client Plan that has an interest in the Accounts or any duly authorized employee or representative of such employer;

(4) Any participant or beneficiary of any Client Plan participating in the Accounts, or any duly authorized employee or representative of such participant or beneficiary; and (5) The Independent Fiduciaries.

(b) None of the persons described above in subparagraphs (2)–(5) of this paragraph shall be authorized to examine the trade secrets of RREEF or any Leasing Affiliate or commercial or financial information which is privileged or confidential.

Section IV—Definitions

(1) The Accounts—The Accounts are any future pooled accounts (i.e., Multiple Client Accounts) or any existing or future single-customer accounts (i.e., Single Client Accounts), including joint ventures, general or limited partnerships or other real estate investment vehicles established by RREEF for the investment of employee benefit Client Plan assets in real-estate related investments to the extent that (i) such Accounts hold ''plan assets'' within the meaning of the regulations at 29 CFR section 2510.3–101 and (ii) management of their assets is subject to the discretionary authority of RREEF.

[3] With respect to Multiple Client Accounts, property management services by RREEF are currently provided in accordance with PTE 82–51 (47 FR 14238/14241, April 2, 1982). PTE 82–51 permits collective investment funds (the Funds) managed by RREEF or any of its affiliates, in which Client Plans participate, to engage in certain transactions with parties in interest with respect to the Client Plans that are investors in the Funds, provided that certain conditions are met. Therefore, the requested exemption is necessary only for the provision of Leasing Services by RREEF's affiliates to the Multiple Client Accounts in connection with the properties held by the Accounts.

[4] RREEF represents that its contract with each Independent Fiduciary will require that the Independent Fiduciary's written records be maintained in accordance with this section.

(2) RREEF—For purposes of this exemption, the term RREEF means RREEF America L.L.C., and certain of their officers who may serve as trustees of group trusts managed by RREEF America L.L.C., or who may serve in similar fiduciary capacities with respect to other commingled investment vehicles managed by them, and/or any other affiliates of RREEF as defined in paragraph (4) of this section IV which act as investment fiduciaries with respect to any Account.

(3) Leasing Affiliate—RREEF Management Company or other affiliates of RREEF (as defined in paragraph (4) of this Section IV) retained to provide Leasing Services with respect to an Account.

(4) An ''affiliate'' of a person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person.

(5) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(6) Independent Fiduciary—A person who:

(a) Is not an affiliate of RREEF as defined in Section IV(4);

(b) Is not an officer, director, employee of, or partner in, RREEF (or affiliates thereof as defined in Section IV(4));

(c) Is not a corporation or partnership in which RREEF has an ownership interest or is a partner;

(d) Does not have an ownership interest in RREEF or any of its affiliates;

(e) Is not a fiduciary with respect to any Client Plan's investment in the Account;

(f) Has represented in writing that it is qualified to perform the services contemplated by the exemption, which qualifications shall include, among other things: (i) Demonstrated experience, generally over a period of not less than five years, in the business of commercial real estate, brokerage, management, or appraisal generally and in reviewing or negotiating leasing agreements and commissions specifically; (ii) familiarity with the relevant real estate, specifically as it relates to comparable property types with respect to the specific properties for which the Leasing Affiliate proposes to perform Leasing Services (for example, in the case of office properties, the Independent Fiduciary's experience shall relate specifically to office properties in the same market); (iii) experience in complying with the fiduciary standards of the Act in connection with the representation of the Client Plans; and

(g) Has acknowledged in writing acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgement as a fiduciary. For purposes of the foregoing, each Independent Fiduciary shall represent in writing that it has no relationship with RREEF or its affiliates, or with any Account, that would affect its best judgement as a fiduciary.

For purposes of this definition of Independent Fiduciary, no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from RREEF or any affiliates of RREEF (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of its or his annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from RREEF or any affiliates of RREEF, or any Account maintained by RREEF or any affiliates of RREEF, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of 6 months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

This exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 31, 1998 at 63 FR 46245 (the Notice).

Written Comments

The Department received two written comments (the Comments) with respect to the Notice and no requests for a public hearing. The Comments were filed by RREEF and generally request clarifications and modifications to the Notice. Set forth below in section I is a discussion of those aspects of the Comments which relate to the language of the final exemption (the Exemption). In addition, section II below discusses those aspects of the Comments which relate to the Summary of Facts and Representations (the Summary) contained in Notice.

I. Discussion of the Comments Regarding the Exemption

1. Section II(10) of the Notice relates to the appropriate percentage of beneficial interests in an Account which must be held by Client Plans with a certain minimum asset size. Specifically, Section II(10) of the Notice states, in relevant part, that 75% or more of the units of beneficial ownership in ''an Account'' must be held by Client Plans or other investors having total assets of at least $100 million. In addition, Section II(10) of the Notice states that 50% or more of the Client Plans investing in ''an Account'' must have assets of at least $100 million.

The Comments state that the foregoing 75% and 50% tests are relevant only in the case of, and are meant to apply to, Multiple Client Accounts (see paragraph 22 of the Summary contained in the Notice). For purposes of this Exemption, RREEF has represented that Single Client Accounts will be established only for Client Plans with at least $100 million in assets. Accordingly, RREEF requests that the foregoing references to ''an Account'' in the first and second sentences of Section II(10) of the Exemption be changed to ''Multiple Client Account.''

The Department acknowledges RREEF's request, as stated in the Comments, and has modified the language of Section II(10) of the Exemption accordingly.

2. The Comments also state that the third sentence in Section II(10) of the Notice provides that ''for purposes of the 50% test'', a group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account is made at the direction of an unaffiliated fiduciary who exercises discretion with respect to

total Client Plan assets in excess of $100 million.

The Comments state that the phrase ''. . . . For purposes of the 50% test'', as it appears in the third sentence of Section II(10) of the Notice, should be deleted. The Comments note that this reference to only the ''50% test'' is not completely accurate in the context of RREEF's Multiple Client Accounts, as contemplated under this Exemption. In this regard, the Comments state that if a fiduciary unaffiliated with RREEF directs the investment of multiple affiliated plans (usually through a single ''master trust'') into a Multiple Client Account, it is appropriate to treat the affiliated plans as a Single Client Plan for both the ''75% test'' and the ''50% test'' referred to in Section II(10). In addition, the Comments state that it is RREEF's understanding that multiple plans of a single employer, invested as a unit at the direction of a fiduciary independent of RREEF, would be treated as a single Client Plan for purposes of establishing a Single Client Account under the Exemption.

The Department acknowledges RREEF's request and has modified the Exemption by deleting the phrase ''. . . . For purposes of the 50% test'' in the third sentence of Section II(10) of the Exemption.

II. Discussion of the Comments Regarding the Summary

1. The Comments state that the Exemption will not be relevant to RREEF USA Fund-I because this Multiple Client Account is in liquidation. Moreover, as stated in the Notice, the Comments reaffirm that RREEF has no intention of using the Exemption for any other current Multiple Client Accounts. Therefore, the Comments note that the references to USA Fund-I in the Notice, which are located in Paragraphs 3 and 20 of the Summary, should be disregarded.

The Department acknowledges the applicant's clarification regarding the applicability of the Exemption to existing Multiple Client Accounts, including USA Fund-I. Thus, in response to this Comment, the Department has modified the definition of the term ''Accounts,'' as it appears in Section IV(1) of the Notice, to clarify that this term does not apply to any existing Multiple Client Accounts. Section IV(1) of the Exemption states, in pertinent part, that the Accounts are any future pooled accounts (i.e., Multiple Client Accounts) or any existing or future single-customer accounts (i.e., Single Client Accounts).

2. With respect to Paragraph 9 of the Summary, the Comments state that the discussion regarding the potential for leasing competition among properties held by an Account and another property held by a RREEF affiliate for its own account in the same real estate market, is not meant to refer in any way to the potential for competition between two properties held by two different Accounts. In the latter case, RREEF and the Independent Fiduciary, subject to the veto rights of the Client Plan(s), will determine whether it would be appropriate for a Leasing Affiliate to provide Leasing Services to one or both of the properties held by such Accounts.

3. With regard to Paragraph 10 of the Summary, the Comments state that the reference to the use of the same Independent Fiduciary for all Accounts that have properties in the same real estate market is not entirely accurate. In this regard, the Comments note that RREEF proposes to use the same Independent Fiduciary for all Accounts that have properties of the same type in the same real estate market. Thus, for example, different Independent Fiduciaries may be retained in the same real estate market for retail and commercial properties.

The Department concurs with all of the Comments relating to the Summary.

Accordingly, after giving full consideration to the entire record, including the Comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above. The Comments have been included as part of the public record of the exemption application.

Interested persons should note that the complete exemption file is available for public inspection in the Public Disclosure Room of the Pension and Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Pacific Income Advisers, Inc. (PIA); Located in Santa Monica, CA

[Prohibited Transaction Exemption 98–53; Exemption Application No. D–10324]

Exemption

Section I—Exemption Involving Plans Where PIA Is Both a Fiduciary or Other Party in Interest With Respect to the Plan and Investment Adviser of Certain Trusts in Which the Plans Invest

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code shall not apply to: (1) the acquisition, sale or redemption of trust units (the Units) in the Pacific Income Advisers Fixed-Income Group Investment Trust (Fixed Income Trust), the Pacific Income Advisers Short-Term Group Investment Trust (Short-Term Trust), the Pacific Income Advisers Equity Group Investment Trust (Equity Trust), and the Pacific Income Advisers Global Group Investment Trust (Global Trust; each a Trust and collectively, the Trusts), by employee benefit plans, and Individual Retirement Accounts (IRA's; collectively, the Plan(s)); and (2) the payment of fees by a Trust to Pacific Income Advisers (PIA) where PIA is a fiduciary or other party in interest with respect to a Plan investing in a Trust and the investment adviser to each of the Trusts, provided the conditions of Section II are met.

Section II—Conditions

(1) (a) The investment of a Plan's assets in the each of the Trusts and the fees to be paid by a Trust to PIA are authorized in writing by a Plan fiduciary who is independent of PIA (Independent Fiduciary).[5] Such authorization shall be consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act. In addition, such authorization shall be either: (1) Set forth in the investment management agreement between the Plan and PIA; (2) indicated in writing prior to each purchase or sale; or (3) indicated in writing prior to the commencement of a specified purchase or sale program in the Units of the Trusts.

(b) PIA does not provide investment advice to a Plan's Independent Fiduciary within the meaning of 29 CFR 2510.3–21(c)(1)(ii) with respect to a Plan's acquisition of Units of a Trust.

(2) Prior to making an initial investment in the Units, each Plan's Independent Fiduciary shall receive the following written disclosures from PIA:

(a) The proposed exemption and grant notice describing the exemptive relief provided herein;

(b) The applicable Trust's Offering Memorandum, outlining the investment

[5] A fiduciary will not be deemed independent of PIA if: (1) such fiduciary is directly or indirectly controlled by PIA or an affiliate thereof; (2) such fiduciary or any officer, director, partner, highly compensated employee, or the relative of such fiduciary is an officer, director, partner, or highly compensated employee, of PIA or an affiliate of PIA; and (3) such fiduciary directly or indirectly receives any compensation or other consideration for that fiduciary's own personal account in connection with any transaction described in this exemption.

objective(s) of the Trust and the policies employed to achieve these objectives and a description of all fees associated with investment in the Trust; and

(c) The applicable Trust's Agreement and Declaration of Trust, disclosing the structure and manner of operation of the Trust.

(d) A statement describing the relationship between PIA and the Trusts.

(3) The Independent Fiduciary shall acknowledge in writing that the Plan is an ''accredited investor'' as defined in Rule 501 of Regulation D of the Securities Act of 1933 (1933 Act). In addition, the Independent Fiduciary shall acknowledge in writing that it has not relied upon the advice of PIA with respect to the acquisition, sale or redemption of the Units.

(4) No Plan shall pay a sales commission or redemption fee, in connection with the acquisition, sale or redemption of the Units of the Trusts.

(5) (a) No participating Plan may invest more than 25% of its total assets in the Global Trust.

(b) No Plan, other than a multiple employer welfare arrangement (MEWA), a multiple employer trust (MET), or voluntary employee benefit association (VEBA), may acquire or hold Units representing more than 20% of the assets of a Trust.[6] A MEWA, MET, or VEBA may acquire and hold Units representing up to 35% of the assets of either the Short-Term Trust or Fixed Income Trust only. As to investment in any other Trust, a MEWA, MET, or VEBA may not acquire or hold Units representing more than 20% of the assets of such Trust.

(c) For purposes of determining the percentage of the assets of a Trust being held by a single Plan, PIA shall first make the calculation 90 days after the first Unit of a Trust is sold to such Plan.

(6)(a) At the time the transactions are entered into, the terms of the transactions shall be at least as favorable to the Plans as those obtainable in arm's length transactions between unrelated parties.

(b) PIA, including any officer or director of PIA, does not purchase or sell shares of the Trusts from or to any Plan Client.

(c) The price paid or received by a Plan Client for Units of a Trust is the net asset value per Unit at the time of the transaction and it is the same price which would have been paid or received for the Units of a Trust by any other investor at that time. For purposes of this paragraph, the term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by an objective method as set forth in each Trust's relevant Trust documents and Trust Offering Memorandum, and other assets belonging to the Trust, less the liabilities charged to such Trust, by the total number of Units of the Trust.

(7) The combined total of all fees paid by a participating Plan shall constitute no more than reasonable compensation within the meaning of section 408(b)(2)of the Act.

(8) The Plan does not pay any Plan-level investment management fees, investment advisory fees or similar fees to PIA with respect to any of the assets of such Plan which are invested in Units of a Trust. This condition does not preclude the payment of investment advisory or similar fees by the Trusts to PIA under the terms of investment management agreements between PIA and each of the Trusts.

(9) All authorizations and approvals made by the Independent Fiduciary regarding investment in a Trust and the fees paid to PIA are subject to an annual reauthorization wherein any such prior authorization shall be terminable at will by the Plan, without penalty to the Plan, upon written notice of termination. A form expressly providing an election to terminate the authorization (the Termination Form) with instructions on the use of the form must be supplied to the Independent Fiduciary no less than annually; provided that the Termination Form need not be supplied sooner pursuant to paragraph (10) below. The Termination Form must include the following information:

(a) The authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by PIA of written notice from the Independent Fiduciary; and

(b) Failure of the Independent Fiduciary to return the Termination Form will result in continued authorization of PIA to continue to engage in the transactions described in Sections I.

(10) PIA will provide, at least 30 days in advance of the implementation of an additional service to a Trust by PIA or a fee increase for investment management, investment advisory or similar services, a written notice to the Independent Fiduciary of the Plan Client explaining the nature and amount of the additional service for which a fee is charged or the increase in fees.

(11) Each Plan shall receive the following:

(a) A monthly report disclosing the performance and the value of the Plan's investment in each of the Trusts. Such monthly report shall disclose the extent to which assets of a Plan have been shifted between the Trusts by PIA and any fee differential resulting from such shifting between the Trusts;

(b) An audited financial statement of each of the Trusts in which a Plan is invested, prepared annually by a independent, certified public accountant, including a list of investments of each Trust and their valuations, provided to the Plan not later than 45 days after the end of the period to which the report relates; and

(c) An annual statement of a Plan's percentage interest in each Trust and the value of the Plan's Units, provided to the Plan not later than 45 days after the end of the period to which the report relates. Such report shall also include the total fees paid to PIA by each Trust. Further, such report shall also include the brokerage fees paid by each Trust to unrelated broker-dealers, as well as the total of all fees and expenses paid by PIA to third parties.

(12) Brokerage transactions for the Trusts are performed by entities unrelated to PIA for no more than reasonable compensation within the meaning of section 408(b)(2) of the Act.

(13) PIA shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (14) of this section to determine whether the conditions of this exemption have been satisfied, except that (a) prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PIA, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than PIA shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (14) below.

(14) (a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (13) of this section shall be unconditionally available at their

[6] A MEWA is defined in section 3 (40)(A) of the Act and provides benefits described in section 3(1) of the Act for employees of two or more employers. Although the term ''MET'' is not used or defined in Title I of the Act, a MET may be covered by Title I of the Act, to the extent that it provides benefits described in section 3(1) of the Act and it is established or maintained by an employer, an employee organization, or both. A VEBA is defined in section 501(c)(9) of the Code and is subject to Title I to the extent that it provides benefits described in section 3(1) of the Act and it is established or maintained by an employer, an employee organization, or both.

customary location during normal business hours for examination by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any Independent Fiduciary of a Plan investing in a Trust, or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any Plan investing in a Trust, or any duly authorized employee representative of such employer;

(4) Any participant or beneficiary of any participating Plan investing in a Trust, or any duly authorized representative of such participant or beneficiary; and

(5) Any other person or entity investing in a Trust.

(b) None of the persons described above in subparagraphs (2)–(5) of this paragraph (14) shall be authorized to examine the trade secrets of PIA or commercial or financial information which is privileged.

EFFECTIVE DATE: This exemption is effective August 29, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 20, 1998 at 63 FR 38855.

Written Comments

The applicant submitted a letter and certain other information commenting on the notice of proposed exemption (the Notice) and the Summary of Facts and Representations contained therein (the Summary). The major points raised by such comments are summarized below.

First, the applicant states that references made in the Notice to the ''Pacific Income Advisers International Group Investment Trust'' should be changed to refer to the ''Pacific Income Advisers Global Group Investment Trust''. Thus, the applicant requests that the first reference to this Trust in the operative language of the exemption should be changed to reflect the proper name, and that references made thereafter in the exemption to the ''International Trust'' should be changed to refer to the ''Global Trust''.

The Department acknowledges the applicant's request and has so modified the language of the exemption.

Second, with respect to Paragraphs 4, 5 and 7 of the Summary, the applicant's comments seek to clarify the relationships between PIA and its clients, including the Plans. In this regard, the applicant states that it is unlikely that a Plan would discontinue a separate account investment advisory relationship with PIA and subsequently invest all of its assets under PIA's management in Units of one or more of the Trusts. The applicant states that it would be more likely that a Plan would instruct PIA to sell some of the assets separately managed by PIA and invest the proceeds in such Units.

Third, with respect to the discussion in Paragraph 10 of the Summary regarding the fees charged to Plans for investments in each of the Trusts, the applicant's comments state that the investment advisory fees payable to PIA by each Trust are subject to change. Such change must be approved in accordance with the terms and conditions set forth in the Notice and this exemption. Thus, for example, Section II(10) of this exemption requires that PIA provide, at least 30 days in advance of the implementation of any fee increase for investment management, investment advisory or similar services, a written notice to the Independent Fiduciary of the Plan explaining the increase in fees. Section II(9)(a) and (b) also requires that the Independent Fiduciary be provided with a Termination Form which allows the Plan to authorize such a fee increase under the procedures described therein.

The Department acknowledges these and other clarifications to the information contained in the Summary, as stated in the applicant's comment letter and accompanying materials.

Accordingly, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of November, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–29963 Filed 11–6–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 24, 1998. Once the appraisal of the records is completed, NARA will

send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of the Census (N1–29–98–1, 3 items, 2 temporary items). Edited and unedited master files of the American Community Survey, a monthly household survey designed to provide accurate and up-to-date profiles of America's communities and replace certain data collected on the long form in the Decennial Census. Public-use microdata files are proposed for permanent retention.

2. Department of Justice, Immigration and Naturalization Service, Agency-wide (N1–85–98–2, 1 item, 1 temporary item). Bond Management Information System, a database used to track the status of immigration bonds posted by aliens. The data does not materially enhance permanent electronic data relating to aliens.

3. Environmental Protection Agency, Agency-wide (N1–412–96–1, 33 items, 31 temporary items). Electronic systems and related paper records pertaining to such matters as Superfund finances, EPA web sites, water quality monitoring in the New York City area and the U.S. Virgin Islands, the status of litigation filed against EPA, electronic bulletin boards, system backups, payrolling, and the determination of the ecological risks posed by synthetic organic chemicals. Master files and documentation associated with an electronic system relating to environmental monitoring and assessment are proposed for permanent retention.

4. Environmental Protection Agency, Environmental Appeals Board (N1–412–97–6, 3 items, 3 temporary items). Records that document review of appeals for environmental permits, enforcement appeals stemming from permit violations, and Comprehensive Environmental Response Compensation and Liability Act reimbursement petitions requesting compensation for an unjust penalty.

5. Federal Communications Commission, Common Carrier Bureau, (N1–173–98–5, 1 item, 1 temporary item). Cost allocation manuals, filed yearly, that specify how local carriers will allocate costs between regulated and nonregulated operations.

6. Federal Energy Regulatory Commission, Office of Pipeline Regulation (N1–138–98–8, 1 item, 1 temporary item). Electronic copies of records in gas pipeline rates and tariffs case files created using electronic mail or word processing applications. Recordkeeping copies were previously approved for disposal.

7. Federal Energy Regulatory Commission, Office of Pipeline Regulation (N1–138–98–10, 1 item, 1 temporary item). Electronic copies of correspondence from oil producers and oil pipeline companies created using electronic mail or word processing applications. Recordkeeping copies were previously approved for disposal.

8. Federal Energy Regulatory Commission, Office of Pipeline Regulation (N1–138–98–11, 2 items, 2 temporary items). Electronic copies of gas pipeline service agreements setting forth pipeline tariffs and rates created using electronic mail or word processing applications. Recordkeeping copies were previously approved for disposal. This schedule also covers paper copies other than the long-term recordkeeping copy.

9. United States Information Agency (N1–59–99–1, 11 items, 5 temporary items). Records from Department of State predecessor elements dealing with international broadcasting matters transferred to the custody of the United States Information Agency upon creation of USIA in 1953. The records consist of requests for copies of Voice of America recordings, status ledgers, extra copies of processed documents, budget and personnel files, and graphs relating to signal strength. Files dealing with overall programs, policies, and operations are proposed for permanent retention.

Dated: October 30, 1998.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 98–29915 Filed 11–6–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

November 4, 1998.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, D.C. on November 19–20, 1998.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on November 19–20, 1998, will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code, because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature and disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on November 19, 1998 will be as follows:

Committee Meetings

9:00–10:30 a.m.—(Open to the Public) Policy Discussion
Public Programs—Room 420
Preservation and Access/Challenge Grants combined meeting with Federal/State Partnership—Room 527
9:00 a.m.–10:30 a.m.—(Closed to the Public) Discussion of specific grant applications and programs before the Council
Research/Education programs—Room M07
10:30 a.m. until Adjourned—(Open to the Public) Policy Discussion
Research/Education Programs—Room M07
Federal/State Partnership—Room 507
10:30 a.m. until Adjourned—(Closed to the Public) Discussion of specific grant applications and programs before the Council
Public Programs—Room 420
Preservation and Access/Challenge Grants—Room 415
12:30–1:30 p.m.
Jefferson Lecture Committee Meeting—Room 430

The morning session on November 20, 1998 will convene at 8:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. New Directives in Television through Digital Technology
C. Staff Report
D. Reports on Policy & General Matters
1. Overview
2. Research and Education Programs
3. Public Programs
4. Preservation and Access and Challenge Grants
5. Federal/State Partnership
6. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Nancy E. Weiss, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 98–29934 Filed 11–6–98; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 located in San Diego County, California.

The proposed amendments would revise the turbine missile protection calculation methodology in the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 (SONGS) licensing basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change is in support of a planned replacement of the existing shrunk-on disc turbines with welded-rotor turbines for Units 2 and 3. The new design is believed to be superior to the existing design in terms of the probability of generation of missiles. However, because a new missile strike-and-damage analysis has not been performed, and due to differences in the method of calculation of missile generation probability—for instance, inclusion of stress corrosion cracking as a potential failure mechanism—it is difficult to quantify the change in probability of damage to safety-related equipment due to turbine missile strikes.

However, in order to characterize the effect of the proposed change, a comparison can be made using the current turbine missile methodology for the current design and the proposed methodology for the proposed design. Using the methodology currently approved for San Onofre Units 2 and 3 for the current shrunk-on disc rotor design, the overall probability of damage to safety-related systems, structures, and components is 0.9×10^{-7}.

Using the methodology proposed by this change for the new welded rotor design, the overall probability of damage to safety-related systems, structures, and components is calculated to be 1.7×10^{-8} per year.

Ultimately, the proposed change is acceptable because the overall probability of damage to safety-related systems, structures, and components will be less than or equal to the acceptance criteria of 1×10^{-7} per year stated in Regulatory Guide (RG) 1.115. The difference between the calculated value of 1.7×10^{-8} and the acceptance criteria of 1×10^{-7} is considered margin that is available to account for any future changes to the turbine missile generation analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Damage to safety-related systems, structures, and components from turbine missiles is currently evaluated in Section 3.5.1.3 of the Updated Final Safety Analysis Report (UFSAR). This proposed change merely provides an alternative method to demonstrate that the overall probability of damage to safety-related systems, structures, and components from turbine missiles will remain less than or equal to the acceptance criterion of 1×10^{-7} per year, which is the current acceptance criterion.

Therefore, this proposed change will not create a new or different kind of accident from any accident that has been previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There is no change to the method of operation of the turbine for Units 2 and 3 as a result of this change. Turbine overspeed protection is unaffected, and provides assurance that the turbine will operate within design limits.

Therefore, there will be no significant reduction in a margin of safety as a result of this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 9, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Douglas K. Porter, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 12, 1998, as supplemented by letter dated October 29, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, Irvine, California 92713.

Dated at Rockville, Maryland, this 3rd day of November 1998.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–29919 Filed 11–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company (South Texas Project Electric Generating Stations Units 1 and 2); Exemption

I

STP Nuclear Operating Company (the licensee) is the holder of Facility Operating License Nos. NPF–76 and NPF–80, for the South Texas Project, Units 1 and 2 (STP). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors located in Matagorda County, Texas.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71 ''Maintenance of records, making of reports,'' paragraph (e)(4) states, in part, that ''Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months.'' The STP two-unit site shares a common UFSAR; therefore, this rule requires the licensee to update the same document annually or within 6 months after a refueling outage for either unit.

III

Section 50.12(a) of 10 CFR, ''Specific exemptions,'' states that

> The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are:
>
> (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.
>
> (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when ''Application 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. . . .'' The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility, but did not provide for multiple unit facilities sharing a common FSAR in the rule. Rather, the Commission stated that ''With respect to . . . multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis'' (57 FR 39355 (1992)).

As noted in the staff's Safety Evaluation, the licensee's proposed schedule for UFSAR updates will ensure that the STP UFSAR and Operations Quality Assurance Plan will be maintained current within 24 months of the last revision and the interval for submission of the 10 CFR 50.59 design change report will not exceed 24 months. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Revising the FSAR annually or 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the 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, and is otherwise in the public interest. The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the STP UFSARs within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the STP UFSAR, the Operations Quality Assurance Plan, and the 10 CFR 50.59 safety evaluation summary reports to the NRC no later than 24 calendar months from the previous revision.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (63 FR 57144).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of November 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–29920 Filed 11–6–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of submission for OMB review; comment request.

SUMMARY: The Office of Management and Budget (OMB) has submitted the information collections listed at the end of this notice to the Office of Information and Regulatory Affairs (OIRA), OMB for review under

provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). These forms are required by OMB Circulars A-102, ''Grants and Cooperative Agreements with State and Local Government,'' and A-110, ''Uniform Administrative Requirements for Grants and Agreements with Institution of Higher Education, Hospitals, and Other Non-Profit Organizations.'' In response to OMBs earlier **Federal Register** notice on July 30, 1998 (63 FR 40745), four responses were received. At this time, OMB proposes no changes to the existing forms.

DATES: Submit comments on or before December 9, 1998.

ADDRESSES: Address comments to Ed Springer, Desk Officer, Office of Information and Regulatory Affairs (OIRA), OMB, 725 17th Street NW, Room 10236, New Executive Office Building, Washington, DC 20503. E-mail comments may be submitted to springer__e@a1.eop.gov. Please include the full body of the comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message. (Comments should also be addressed to the Office of Federal Financial Management at the address listed below.)

FOR FURTHER INFORMATION CONTACT: F. James Charney, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993 (e-mail charney__f@a1.eop.gov). The standard forms can be obtained via fax by calling OMB's FAX Information Line (202–395–9068). The forms can also be downloaded from the OMB Grants Management home page (http://www.whitehouse.gov/WH/EOP/OMB/Grants).

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0039.

Title: Financial Status Report (Long Form).

Form No: SF–269.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 200,000.

Estimated Time Per Response: 90 minutes.

Needs and Uses: The SF–269 is used to monitor grantee expenditures in circumstances where grantees earn program income or contribute matching funds. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0038.

Title: Financial Status Report (Short Form).

Form No: SF–269A.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 200,000

Estimated Time Per Response: 30 minutes.

Needs and Uses: The SF–269A is used to monitor grantee expenditures in circumstances where grantees earn program income or contribute matching funds. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0004.

Title: Request for Advance or Reimbursement.

Form No: SF–270.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance methods are not used. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0002.

Title: Outlay Report and Request for Reimbursement for Construction Programs.

Form No: SF–271.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 40,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–271 is used to request reimbursement for all construction programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0003.

Title: Federal Cash Transactions Report.

Form No: SF–272 and SF–272A.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 120 minutes.

Needs and Uses: The SF–272 & 272A are used to report disbursement information for each financial assistance agreement when funds are advanced to them through letters of credit or with direct Treasury check. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0043.

Title: Application for Federal Assistance.

Form No: SF–424.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 400,000.

Estimated Time Per Response: 45 minutes.

Needs and Uses: The SF–424 is used to apply for Federal grants. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0044.

Title: Budget Information—Nonconstruction Programs.

Form No: SF–424A.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 360,000.

Estimated Time Per Response: 180 minutes.

Needs and Uses: The SF–424A is used to budget and request grant funds for nonconstruction programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0040.

Title: Assurances—Nonconstruction Programs.

Form No: SF–424B.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 360,000.

Estimated Time Per Response: 15 minutes.

Needs and Uses: The SF–424B is used to assure compliance with statutory requirements for nonconstruction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0041.

Title: Budget Information—Construction Programs.

Form No: SF–424C.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 40,000.

Estimated Time Per Response: 180 minutes.

Needs and Uses: The SF–424C is used to budget and request grant funds for construction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0042.

Title: Assurances—Construction Programs.

Form No: SF–424D.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 40,000.

Estimated Time Per Response: 15 minutes.

Needs and Uses: The SF–424D is used to assure compliance with statutory requirements for construction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

Issued in Washington, DC, October 19, 1998.

G. Edward DeSeve,

Controller.

[FR Doc. 98–29847 Filed 11–6–98; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE

Changes in Domestic Rates, Fees, and Mail Classifications

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule, domestic rates, and fees and of corrections to the notice published at 63 FR 39124.

SUMMARY: This notice sets forth the rate and fee changes and the accompanying Domestic Mail Classification Schedule (DMCS) changes to be implemented as a result of the Decision of the Governors of the United States Postal Service on the Further Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R97–1 (October 5, 1998). This notice also contains minor corrections to the notice published at 63 FR 39124.

EFFECTIVE DATE: January 10, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., (202) 268–2989.

SUPPLEMENTARY INFORMATION: On July 10, 1997, pursuant to its authority under 39 U.S.C. 3621, et seq., the Postal Service filed with the Postal Rate Commission (PRC) a Request for a Recommended Decision on Proposed Changes in Rates of Postage and Fees for Postal Services (Request). The PRC designated the filing as Docket No. R97–1. The PRC published a notice of the filing, with a description of the Postal Service's proposals, on July 23, 1997, in the **Federal Register** (62 FR 39660).

On May 11, 1998, pursuant to its authority under 39 U.S.C. 3624, the PRC issued its Recommended Decision on the Postal Service's Request to the Governors of the Postal Service.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on June 29, 1998. In one decision, the Governors rejected the PRC's recommendations regarding Prepaid Reply Mail and Courtesy Envelope Mail. Decision of the Governors of the United States Postal Service on the Recommended Decisions of the Postal Rate Commission on Prepaid Reply Mail and Courtesy Envelope Mail, Docket No. R97–1 (June 29, 1998). In the second decision, the Governors acted on the remainder of the PRC's recommendations. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R97–1 (June 29, 1998). The Governors approved all of the remaining classification, fee, and rate changes (see 63 FR 39124), except that the Governors allowed under protest and returned for reconsideration recommendations related to three categories of mail. In particular, the Governors requested further action or clarification on the PRC's recommendations concerning Within County, Library Mail, and destination delivery unit Parcel Post.

In response, the PRC solicited comments on those matters from all interested parties, and thereafter issued a Further Recommended Decision upon reconsideration on September 24, 1998. On October 5, 1998, the Governors approved the relatively minor recommended changes in the rate and fee schedules for those three subclasses, along with associated classification changes, recommended by the PRC in its further Recommended Decision. Also on October 5, 1998, the Board of Governors of the Postal Service, pursuant to its authority under 39 U.S.C. 3625(f), determined to implement the rate, fee and classification changes approved by the Governors effective at 12:01 a.m. on January 10, 1999 (Resolution No. 98–12).

In accordance with the Decision of the Governors and Resolution No. 98–12, the Postal Service hereby gives notice that the classification, fee, and rate changes set forth below will become effective at 12:01 a.m. on January 10, 1999. For the affected subclasses and rate categories, the rate and fee schedules published below supersede those rate and fee schedules accepted or allowed under protest by the Governors in their Decision on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R97–1 (June 29, 1998) and published at 63 FR 39124.

Changes in implementation regulations published in the Domestic Mail Manual also become effective on January 10, 1999, as noted in a separate notice in the **Federal Register**.

A copy of the attachments to the Governors' Decision, setting forth the classification, fee, and rate changes ordered into effect by the Governors on the PRC's Further Recommended Decision, is set forth below.

A correction to Fee Schedule 943, which was published in the **Federal Register** on July 21, 1998 (63 FR 39143), is also published below. No substantive change is made to Fee Schedule 943; rather, the second heading entitled ''Express Mail Insurance'' is moved from the center to the left to clarify its applicability to the first two fee groupings for Express Mail Insurance. In addition, the Postal Service hereby gives notice that, due to complications apparently arising from word processing software conversions, the term ''correction'' surrounded by quotation marks in Domestic Mail Classification Schedule sections 221.24(b), 222.34(b), 321.231(c), 321.33, 321.431(c), 423.81, and 423.82 appears as ''Acorrection@'' in the version of Attachment B to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission in Docket No. R97–1 (June 29, 1998) published at 63 FR 39124.

Attachment A to the Decision of the Governors of the United States Postal Service on the Further Recommended Decision of the Postal Rate Commission in Docket No. R97–1

(October 5, 1998)

Changes to Domestic Rates and Fees

STANDARD MAIL RATE SCHEDULE 322.1E, PARCEL POST SUBCLASS, DESTINATION DELIVERY UNIT RATES (CONTINUED)

[Dollars]

Weight (pounds)	
2	1.21
3	1.26
4	1.32
5	1.37
6	1.41
7	1.45
8	1.50
9	1.55
10	1.59
11	1.63
12	1.67
13	1.72
14	1.74
15	1.78
16	1.82
17	1.85
18	1.90
19	1.92
20	1.96
21	1.99
22	2.02
23	2.06
24	2.08
25	2.12
26	2.15
27	2.19
28	2.21
29	2.25
30	2.27
31	2.31
32	2.33
33	2.36
34	2.40
35	2.43
36	2.46
37	2.47
38	2.51
39	2.54
40	2.57
41	2.60
42	2.62
43	2.65
44	2.67
45	2.70
46	2.74
47	2.77
48	2.79
49	2.82
50	2.84
51	2.87
52	2.90
53	2.92
54	2.94
55	2.98
56	3.01
57	3.03
58	3.07

STANDARD MAIL RATE SCHEDULE 322.1E, PARCEL POST SUBCLASS, DESTINATION DELIVERY UNIT RATES (CONTINUED)—Continued

[Dollars]

Weight (pounds)	
59	3.07
60	3.10
61	3.13
62	3.16
63	3.18
64	3.21
65	3.24
66	3.27
67	3.29
68	3.31
69	3.34
70	3.38
Oversize parcels [1]	8.69

Schedule 322.1E Notes:

[1] See DMCS section 322.161 for oversize Parcel Post.

[2] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

[3] A fee of $100.00 must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULES 323.1 AND 323.2: SPECIAL AND LIBRARY RATE SUBCLASSES

	Rates (cents)
Schedule 323.1: Special	
First Pound:	
Not presorted [4]	113
Level A Presort (5-digits) [1 2]	64
Level B Presort (BMC) [1 3 4]	95
Each additional pound through 7 pounds	45
Each additional pound over 7 pounds	28
Schedule 323.2: Library	
First Pound:	
Not Presorted [4]	113
Level A Presort (5-Digits) [1 2]	64
Level B Presort (BMC) [1 3 4]	95
Each additional pound through 7 pounds	45
Each additional pound over 7 pounds	28

Schedule 323.1 and 323.3 Notes:

[1] A fee of $100.00 must be paid once each 12-month period for each permit.

[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.

[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.

[4] For Barcoded Discount, deduct $0.03 per-piece.

PERIODICALS RATE SCHEDULE 423.2

	Rate (cents)
Within County (Full Rates)	
Per Pound:	
General	13.3
Delivery Office [1]	10.7
Per Piece:	
Required Presort	9.5
Presorted to 3-digit	8.8
Presorted to 5-digit	8.0
Carrier Route Presort	4.3
Per Piece Discount:	
Delivery Office [2]	0.4
High Density (formerly 125 piece) [3]	1.4
Saturation	1.8
Automation Discounts for Automation Compatible Mail [4]	
From Required:	
Prebarcoded Letter size	4.9
Prebarcoded Flat size	3.0
From 3-digit:	
Prebarcoded Letter size	4.4
Prebarcoded Flat size	2.6
From 5-digit:	
Prebarcoded Letter size	3.9
Prebarcoded Flat size	2.2

Schedule 432.2 Notes:

[1] Applicable only to carrier route (including high density and saturation) presorted pieces to be delivered within the delivery area of the originating post office.

[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.

[3] Applicable to high density mail, deducted from carrier route presort rate. Mailers also may qualify for this discount on an alternative basis as provided in DMCS section 423.83.

[4] For automation compatible pieces meeting applicable Postal Service regulations.

SCHEDULE 1000

	Fee
First-Class Presorted Mailing	$100.00
Periodicals:	
A. Original Entry	305.00
B. Additional Entry	50.00
C. Re-entry	50.00
D. Registration for News Agents	50.00
Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route, Standard Mail Bulk Mailing	100.00
Parcel Post: Destination BMC, SCF, and DDU	100.00
Special and Library Standard Mail Presorted Mailing	100.00
Authorization to Use Permit Imprint	100.00
Merchandise Return (per family receiving merchandise return labels)	100.00
Prepaid Reply Mail Permit (see Fee Schedule 934)	
Business Reply Mail Permit (see Fee Schedule 931)	

SCHEDULE 1000—Continued

	Fee
Authorization to Use Bulk Parcel Return Service	100.00

Attachment B to the Decision of the Governors of the United States Postal Service on the Further Recommended Decison of the Postal Rate Commission in Docket No. R97–1

Changes to the Domestic Mail Classification Schedule

Amend the Domestic Mail Classification Schedule by Inserting Italicized Text and Deleting Bracketed Text as Follows:

STANDARD MAIL CLASSIFICATION SCHEDULE

* * * * *

323.2 Library Subclass

* * * * *

[323.22 Basic Rate Category. The basic rate category applies to all Library subclass mail.]

323.22 Single-Piece Rate Category. The single-piece rate category applies to Library subclass mail not mailed under section 323.23 or 323.24.

323.23 Level A Presort Rate Category. The Level A presort rate category applies to mailings of at least 500 pieces of Library subclass mail, prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

323.24 Level B Presort Rate Category. The Level B presort rate category applies to mailings of at least 500 pieces of Library subclass mail, prepared and presorted to destination Bulk Mail Centers as specified by the Postal Service.

323.2[3]5 Barcoded Discount. The barcoded discount applies to Library subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

* * * * *

382 Special *and Library* Subclasses

A presort mailing fee as set forth in Schedule 1000 must be paid once each year at each office of mailing by or for any person who mails presorted Special *or Library* subclass mail. Any person who engages a business concern or other individuals to mail presorted Special *or Library* subclass mail must pay the fee.

* * * * *

Correction to Fee Schedule 943 Published at 63 FR 39143 (July 21, 1998)

FEE SCHEDULE 943

Insurance	Fee (in addition to postage)
Express Mail Insurance	
Document Reconstruction Coverage:	
$0.01 to $500	No charge.
Merchandise Coverage:	
$0.01 to $500	No charge.
500.01 to $5000	$0.95 for each $100 (or fraction thereof) over $500 value.
General Insurance Coverage	
$ 0.01 to $50	$0.85 [1]
50.01 to 100	$1.80 [1]
100.01 to 5000	$1.80 plus $0.95 for each $100 (or fraction thereof) over $100 in coverage [1].

[1] For bulk insurance, deduct $0.40 per piece.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–29999 Filed 11–6–98; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23514; 812–10734]

CD Radio Inc.; Notice of Application

November 2, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant requests an order exempting it from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date applicant ceases to be an investment company.

FILING DATE: The application was filed on July 22, 1997, and amended on August 6, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 27, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW, Washington, DC 20549. Applicant, 14th Floor, 1180 Avenue of the Americas, New York, NY 10019–6064.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564

(Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation formed in 1990 and engaged in the business of developing a national satellite broadcast system to provide digital audio radio service (''Service''). In October 1997, applicant was granted a license by the Federal Communications Commission (''FCC'') to build, launch and operate the Service.

2. To obtain the funds needed to pay for the FCC License, in 1997 applicant completed a public stock offering, a public debt offering, and a private placement of its common stock. Pending utilization in building the Service, the proceeds of the offerings were used to pay for the FCC License and invested in a money market fund, U.S. government securities, commercial paper, and a bank certificate of deposit.

3. For applicant to continue to hold the FCC License, applicant must satisfy certain progress requirements, including meeting certain deadlines for the construction and launch of satellites, and a deadline for the Service to be in full operation. Satisfying these requirements will require significant expenditures. Applicant currently expects to commence operations of the Service by the first quarter of the year 2000.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it ''is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.'' Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except government securities, and securities which are issued by majority-owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Applicant states that, pending utilization in building and operating the System, the proceeds of applicant's offerings of its stock may be held in ''investment securities'' within the meaning of section 3(a)(2) of the Act. As of June 30, 1998, approximately 44% of applicant's total assets consisted of ''investment securities.'' Applicant states, therefore, that it may come within the definition of investment company in section 3(a)(1)(C) of the Act. Applicant also states that it anticipates raising additional funds to complete the development of the System, and will place the proceeds in U.S. government securities and shares of money market funds to be drawn down as needed to complete the construction and operate the System.

3. Section 6(c) of the Act permits the SEC to exempt any person, security, or transaction from any provision of the Act, if and 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.

4. Applicant requests an exemption under section 6(c) from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date applicant ceases to be an investment company. Applicant believes that within this period it will have sufficient expenditures of funds on the establishment of the Service and the acquisition of non-investment assets to cure its temporary status under section 3(a)(1)(C) of the Act.

5. Applicant asserts that, as a company that was created to build and operate the Service, applicant is not the type of entity that was intended to be governed by the Act. Applicant states that, since its inception, its principal activities have been in technology development, pursuing regulatory approval for the Service, discussions with radio manufacturers and automakers, market research, design and development, development of a mobile demonstration program, contract negotiations with satellite and launch vehicle contractors, technical efforts with respect to standards and specifications, and securing adequate working capital. Applicant thus asserts that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that the requested exemption will be subject to the following conditions:

1. Applicant will not purchase or otherwise acquire any securities other than shares of a money market fund and U.S. Government securities.

2. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities.

3. Applicant will allocate and utilize its accumulated cash and securities for the purpose of funding its satellite radio system business.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29863 Filed 11–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23517; File No. 812–11208]

John Hancock Bond Trust, et al.; Notice of Application

November 2, 1998.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of application for an order pursuant to Section 11(a) of the Investment Company Act of 1940 (the ''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order approving the terms of offers of exchange by the Funds, as defined below, and John Hancock Funds, Inc. (''JHFI'') to certain holders of variable annuity contracts (''Contracts'') issued by Variable Annuity Accounts U and V of John Hancock and Variable Annuity Account I of JHVLICO (collectively, the ''Accounts'').

APPLICANTS: John Hancock Bond Trust, John Hancock Capital Series, John Hancock Current Interest, John Hancock Investment Trust, John Hancock Investment Trust II, John Hancock Investment Trust III, John Hancock Series Trust, John Hancock Bond Fund, John Hancock Special Equities Fund, John Hancock Strategic Series, John Hancock World Fund (the ''Funds''), JHFI, John Hancock Variable Life Insurance Company (''JHVLICO'') and John Hancock Mutual Life Insurance Company (''John Hancock,'' together with JHVLICO, JHFI and the Funds, ''Applicants'')

FILING DATES: The application was filed on June 29, 1998, and amended on October 30, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or

by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 27, 1998, and must be accompanied by proof of service on the Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Ronald J. Bocage, Esq., John Hancock Mutual Life Insurance Company, John Hancock Place, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission (tel. (202) 942–8090).

Applicants' Representations

1. Each Fund is a business trust organized under the laws of Massachusetts, is registered under the Act as an open-end management investment company and was organized by John Hancock or an affiliated company of John Hancock. Each Fund offers up to three classes of shares: ''A Shares'' (which are sold with a front-end sales load of up to 5% or alternatively, for certain purchases, a reduced deferred sales charge); ''B Shares'' (which are sold with a deferred sales load of up to 5% that declines to 0% after the sixth year); and ''C shares'' (which are sold with a reduced deferred sales charge of 1% which declines to 0% after the first year) Only A Shares will be offered in the proposed exchanges.

2. JHFI is an indirect, wholly-owned subsidiary of John Hancock. JHFI is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. (''NASD''). JHFI is the principal underwriter for each of the Funds.

3. Each Fund, except for John Hancock Bond Fund and John Hancock Special Equities Fund, offers its shares by series (collectively, ''Series,'' and together with the non-series Funds, the ''Exchange Funds''). The investment manager of each of the Exchange Funds is John Hancock Advisers, Inc. (''Advisers''), an indirectly wholly-owned subsidiary of John Hancock.

4. The expense ratios of the Exchange Funds on an annual basis for their last fiscal year, including management fees, 12b–1 fees and other expenses, ranged from a low of 0.35% for John Hancock U.S. Government Cash Reserve to a high of 2.06% for John Hancock Pacific Basin Equities Fund. These expense ratios reflect the impact of Advisers' and/or JHFI's temporary agreement to limit expenses, including management fees and 12b–1 fees. Without these limitations, the expense ratios would have ranged from 1.00% for the John Hancock Strategic Income Fund to 3.03% for the John Hancock International Fund.

5. The Contracts are variable annuity contracts issued by Variable Annuity Accounts U and V of John Hancock and Variable Annuity Account I of JHVLICO. The Contracts have been purchased on behalf of pension plans (''Plans'') qualified under Section 401(k) of the Internal Revenue Code of 1986 (''Code'') and certain target-benefit pension plans (''Target Benefit Plans''), both of which are qualified under Section 401(a) of the Code to fund pension benefits payable to eligible persons (''Participants'') participating in the Plans. Under the terms of the various Plans holding the Contracts, the employer sponsoring the Plan (''Plan Sponsor'') is the Contract owner, and only the Plan Sponsor is permitted to make premium payments to fund Plan benefits (either directly or through salary deductions). Further, only the Plan Sponsor is authorized to select the investment vehicle(s), such as the Contracts, in which Plan assets are to be invested. Depending on the type of Plan involved, Plan assets held under the Contracts may or may not be allocated specifically as being for the account of individual Participants. With respect to certain 401(k) Plans, the Plan Sponsor purchases individual Contracts on behalf of Plan Participants, in which case Plan assets would be allocated specifically to the Contracts owned by the Plan on behalf of such Participants, and the Participants may be entitled to provide instructions with respect to how Plan assets held in such Contracts are to be invested among the available investment options. With respect to the remaining 401(k) Plans and all Target Benefit Plans, the Plans provide that Plan assets are not allocated specifically as being for the account of individual Participants, in which case the Contract essentially serves as an ''unallocated'' group contract holding Plan assets for the benefit of the all Plan Participants, with the Plan Sponsor investing Plan assets among the available investment options. The Contracts, however, are no longer being offered for use on such an ''unallocated'' basis. Plan sponsors holding contracts issued by the Accounts in connection with target-benefit plans where plan assets are allocated specifically as being for the account of individual participants are not eligible to participate in the exchange offer that is the subject of the application.

6. The investment options underlying the Contracts consist of a fixed account investment option that is part of John Hancock's general account, and the 23 portfolios of John Hancock Variable Series Trust I (''Trust''), a series-type mutual fund advised by John Hancock. These 23 portfolios (collectively, ''Portfolios'') have a wide range of investment objectives.

7. All but one form of the Contracts have a contingent deferred sales charge (''CDSC''). The maximum CDSC for any Contract is 8.5%, and in all cases the CDSC declines to 0% seven years after the date of the contribution to which the CDSC applies. Moreover, for Contracts that impose a CDSC, there is also a ''free corridor'' provision, which, if applicable, allows certain amounts to be withdrawn annually without a CDSC. One form of Contract imposes a maximum front-end sales charge of 8% of purchase payments made. None of the Contracts provides for any sales charges that is deducted from assets.

8. Applicants state that the Contracts have an annual maintenance charge that ranges from $10 per year to $30 per year, plus a daily asset-based administrative charge. For certain Contracts, the annual maintenance charge is waived if the account value exceeds $10,000, and John Hancock or JHVLICO may reserve the right to increase the annual maintenance charge to $50, with state approval. The asset-based administrative charge ranges from 0.25% to 0.50% (on an annual basis) of the current Contract value.

9. A mortality and expense risk charge that ranges from 0.75% to 1.15% of the assets of the issuing Account may be deducted under the Contracts.

10. There is no charge for transfers under the Contracts, but such transfers are limited to twelve per Contract year, although one form of Contract limits such transfers to four per Contract year. State premium taxes are deducted at annuitization or from payments, in accordance with applicable state laws.

11. The expense rations of the Portfolios which serve as the investment vehicle for the Accounts ranged from 0.28% to 1.55% (after expense reimbursements) on an annual basis in their last fiscal year. Applicants state

that when the Portfolio expenses are added to the maximum mortality and expense risks charge and applicable asset-based administration charges of the Contracts, the ongoing expense of the Contracts ranges from 1.81% to 3.05% (3.32% without expense reimbursement), excluding the up of $30 per year maintenance charge.

12. Applicants state that certain Plan Sponsors of Plans holding Contracts have determined to change the nature of their Plans and to replace the Contracts with Exchange Fund shares. To facilitate this change, Plans holding Contracts may wish to surrender them and reinvest the proceeds in Class A shares of the Exchange Funds. Any such surrender and reinvestment of proceeds will be at relative net asset values; i.e., immediately after the transaction, the aggregate value of the shares of the Exchange Funds acquired will be identical to the cash value of the Contract immediately prior to the transaction. No administrative fee or any other charge will be imposed for effecting this transaction. No CDSC on the Contracts to be surrendered will be imposed.

13. Applicants further state that, prior to surrendering a Contract, the Plan Sponsor will be responsible for determining, consistent with the terms of its Plan, the appropriate allocation of Plan assets among Plan Participants. The Plan Sponsor also will be responsible for obtaining instructions from each Plan Participant concerning the manner in which Plan assets attributable to that Plan Participant, as well as future contributions, are to be allocated among the available Exchange Funds. Once a Plan Sponsor decides to surrender a Contract and provides the necessary allocation instructions, such surrender and reinvestment of proceeds will take place immediately at relative net asset values. For 90 days following the surrender of the Contract by the Plan, Participants will be allowed unlimited, free transfer among the Exchange Funds available under the Plan, subject to the Exchange Funds' current exchange policies and any limitation imposed by a Plan. No Exchange Fund front-end load will be deducted, and no Exchange Fund deferred sales charges will become applicable at the time of any transfer from Exchange Fund shares that were acquired as a result of the surrender of the Contract, regardless of when any such transfers are effected. At present, this offer of exchange is expected to be made available to Plan Sponsors during the six-month period following the issuance of the order sought by the application.

14. Applicants state that one or more aspects of the above transactions may be deemed to involve one or more offers of exchange by a Fund or JHFI that requires Commission approval under Section 11 of the 1940 Act. All recipients of such offers will be provided current prospectuses for the Exchange Funds available to them. Accompanying such prospectuses may be sales literature, including a cover letter, that has been approved by the NASD. Such sales literature will highlight the differences between Contracts and shares of the Funds and the terms of the offer of exchange. Administrative details of effecting exchanges will be handled by JHFI.

15. The exchanges will be effected as direct transfers and will not have adverse tax consequences for offerees who accept the exchange offer.

Applicants' Legal Analysis

1. Section 11(a) of the 1940 Act makes it unlawful for a registered open-end investment company or principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made.

2. Section 11(c) of the 1940 Act provides that, irrespective of the basis of exchange, subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

3. Applicants maintain, for the reasons summarized below, that the terms of the proposed offers of exchange do not involve any of the ''switching'' (*i.e.,* offer of exchange made solely for the purpose of assessing additional selling charges) abuses that led to the adoption of Section 11 of the 1940 Act.

4. Applicants state that the exchanges will be made on the basis of relative net asset value (*i.e.,* immediately after an exchange, the cash value of the Exchange Fund shares acquired will be identical to the cash value under the Contract immediately prior to the exchange). Further, no CDSC will be applicable to Exchange Fund shares acquired as part of the exchange, and no administrative fee or sales load will be deducted at the time of the exchange. Applicants state that the exchanges will not have adverse tax consequences for offerees who accept the exchange offer because the exchanges proposed would be made as direct transfers.

5. Applicants state that, as a general matter, Exchange Funds with investment objectives comparable to most of the 23 Portfolios will be available through the exchange offer, although each Plan may not offer all Exchange Funds available pursuant to the exchange offer. Certain of the Portfolios, however, are designed to fill a specific ''niche,'' such as the Real Estate Equity Portfolio and International Balanced Portfolio, and there are no Exchange Funds comparable to these ''niche'' funds that are currently available under the Contracts. Accordingly, depending on the Exchange Funds made available by a Plan, the exchange offer will offer an opportunity to permit Plan Sponsors and Participants to duplicate generally the current investment objective selection under the Contracts by allocating plan assets held in their accounts among Exchange Funds with comparable investment objectives, or to expand those investment objectives by selecting Exchange Funds with investment objectives not available under the Contracts. Further, Applicants state that the expenses of the Exchange Funds are generally lower than the combined expenses and fees of the Contracts and the Portfolios in which the Accounts invest. Accordingly, those persons who accept the exchange offer should incur lower expenses than those incurred under the Contracts.

6. Applicants have consented to the following conditions:

(a) No redemption or administrative fee will be imposed in connection with the proposed exchanges.

(b) At the commencement of the exchange offer, and at all times thereafter, the prospectus or the statement of additional information, as appropriate, of the offering Exchange Fund will disclose that the exchange offer is subject to termination and its terms are subject to change.

(c) Whenever the exchange offer is to be terminated or its terms are to be amended materially, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that no notice need be given if, under extraordinary circumstances, either—

(i) There is a suspension of the redemption of the exchanged security

under Section 22(e) of the Act and the rules and regulations thereunder, or

(ii) The offering Exchange Funds temporarily delays or ceases the sale of the security to be acquired because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

Other than in the circumstance set forth in (c)(i) and (c)(ii) above, Applicants would dispense with the 60-days notice requirement only upon obtaining further relief from the Commission authorizing them to do so.

Conclusion

For the reasons summarized above, Applicants submit that the proposed offer of exchange is consistent with the intent and purpose of Section 11 of the 1940 Act, and that none of the abuses which Section 11 was enacted to prevent will be present.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29971 Filed 11–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26935]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 2, 1998.

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 under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) and any amendment 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 November 27, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarants(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 should 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 November 27, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Interstate Energy Corporation, et al. (70–9317)

Interestate Energy Corporation (''IEC''), a registered holding company, Wisconsin Power & Light Company, a public utility subsidiary company of IEC (''WPL''), Alliant Services Company (''Services''), a subsidiary service company of IEC, Alliant Industries, Inc., (''Alliant'') a wholly owned subsidiary of IEC, Heartland Environmental Holding Company, RMT, Inc., Heartland Energy Group, Inc., Heartland Properties, Inc., Capital Square Financing Corporation, Cargill-Alliant LLC, all nonutility subsidiary companies of Alliant, and Wisconsin Power & Light Company, a public utility subsidiary company of IEC, located at 222 West Washington Avenue, Madison, Wisconsin 53703, Interstate Power Company (''Interstate Power''), a public utility subsidiary company of IEC, 1000 Main Street, PO Box 769, Dubuque, Iowa 53004–0789, IES Utilities Inc. (''IES Utilities''), a public utility subsidiary company of IEC, IES Transportation Inc., IEC Transfer Services Inc., IES Investments Inc., IES Investco Inc., Village Lakeshares Inc., Prairie Ridge Business Park, Iowa Land and Building Company, IES International Inc., all indirect nonutility subsidiary companies of Alliant, located at 200 First Street, SE, Cedar Rapids, Iowa 52401, Whiting Petroleum Company, an indirect nonutility subsidiary company of Alliant, Mile High Center, 1700 Broadway, Denver, Colorado 80290, and IEI Barge Services Inc. and Cedar Rapids and Iowa City Railroad Company, both indirect nonutility subsidiary companies of Alliant, located at 2330 12th Street, SW, Cedar Rapids, Iowa 52404, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(f), and 13(b) of the Act and rules 32, 33, 40, 43, 44, 45, 53, 54, 87(b)(1), 90, 91 and 93 under the Act.

IEC and Alliant propose through December 31, 2000, to form and fund a Utility Money Pool (''Utility Pool'') and a Nonutility Money Pool (''Nonutility Pool'') in aggregate amounts not to exceed $450 million and $600 million respectively, through the issuance and sale of commercial paper and bank borrowings.[1] IEC also proposes to finance the acquisition of foreign utility companies (''FUCOs'') and exempt wholesale generators (''EWGs'') through the issuance of commercial paper and bank borrowings in an amount not to exceed $300 million. IEC represents that borrowings allocated to finance FUCO and EWG acquisitions will not at any time exceed 50% of IEC's retained earnings. Lastly, IEC proposes through December 31, 2000 to enter into guarantee agreements (''Guarantee'') in an amount not to exceed $600 million.

The Utility Pool participants are WPL, IES Utilities, Interstate Power and Services. The aggregate principal amount of borrowings outstanding at any one time from the Utility Pool will be limited as follows: WPL, $128 million; IES Utilities, $150 million; Interstate Power, $72 million; and Services, $100 million.[2] IEC states that participants in the Utility Pool intend to use the funds for general corporate purposes including interim funding of construction programs until permanent financing can be arranged.

IEC proposes to issue commercial paper that will have a commercial rating of at least A–1 by Standard & Poor's (''S&P'') or at least P–1 by Moody's Investor Services (''Moody's''), and Alliant proposes to issue commercial paper that will have a commercial rating of at least A–2 by S&P or P–2 by Moody's. IEC proposes to issue and sell commercial paper to fund the Utility Pool and invest in and acquire EWGs and FUCOs. Alliant proposes to issue and sell commercial paper to fund the Nonutility Pool.[3]

The proceeds from the sale of the commercial paper that will be used to fund the Nonutility Pool will be added to Alliant's treasury funds in a separate nonutility account. The proceeds from the sale of commercial paper intended to fund the Utility Pool and the investment in and acquisition of FUCO's will be added to IEC's treasury funds in separate utility and FUCO investment/acquisition accounts.

IEC and Alliant propose to issue commercial paper to dealers in the form of book-entry unsecured promissory notes of varying denominations not less than $100,000. Each note will mature not more than two-hundred and seventy

[1] Rule 52 exempts Alliant's financial transactions from Commission jurisdiction, however, this information is provided for background purposes.

[2] The figure for WPL includes the maximum outstanding borrowing for South Beloit Water, Gas & Electric Company, a wholly owned subsidiary of WPL.

[3] The Nonutility Pool participants are all nonutility subsidiary companies, except Services, included in this Application-Declaration.

days from the date of issue. The notes will be issued and sold by IEC and Alliant directly to dealers at rates not to exceed the rate per annum prevailing at the time of issuance for commercial paper of comparable qualities and maturities sold by issuers thereof to commercial paper dealers. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. Applicants also request authorization for IEC and Alliant to sell commercial paper directly to certain financial institutions. Sales of commercial paper directly to these institutions will occur only if the resulting cost of money would be equal to or less than that available from dealer-placed commercial or bank borrowings. The terms of directly placed notes would be similar to those of dealer-placed notes.

IEC and Alliant have also entered into credit agreements with banks to support the issuance of commercial paper and in lieu of issuing commercial paper may borrow directly from the banks if it is more cost effective.[4]

Borrowings from banks will be evidenced by promissory notes. Each note, whether issued under a term loan or an open credit line, will be for the principal amount available to be borrowed at the time from the lending bank and be payable to the order of the bank; shall be dated the date of the closing of the loan; shall bear interest at a rate no higher than the effective cost of money for unsecured prime commercial bank loans prevailing at the date of borrowing; and, shall be subject to repayment by the borrower in whole at any time or in part from time to time without premium or penalty.

The cost of compensating balances and fees paid to banks to maintain credit lines will be initially allocated to the subsidiaries of IEC on the basis of relative maximum outstanding short-term borrowings for the prior calendar year from the particular money pool in which the subsidiary participates, and the costs will be retroactively reallocated at the end of each calendar year on the basis of that year's actual relative maximum outstanding short-term borrowing of each subsidiary in the particular pool. However, during the first calendar year of operation of the money pools, the cost will initially be allocated to the subsidiaries based on the relative maximum borrowing authority of each subsidiary, and, similar to the calculations to be made in subsequent years of operations, the costs will be retroactively reallocated at the end of the first calendar year on the basis of that year's actual relative maximum outstanding short term borrowing of each subsidiary.

The funds available to the Utility Pool will be loaned by IEC on a short-term basis to applicants that are public utility subsidiaries and, to a lesser extent, will also come from the utility participants themselves, to the extent permitted by state law, through the investment of surplus funds into the Utility Pool.

Under the proposed terms of the respective money pools, from time to time, short-term funds will be made available to participants of the money pools if Services, as administrator of both money pools, determines that it will result in a lower cost of borrowing consistent with the individual borrowing needs and financial standing of the participating subsidiaries.

Services will provide each money pool participant with periodic activity and cash accounting reports that include, among other things, reports of each activity, the daily balance of loans outstanding, and the daily interest charged. No party will be required to effect a borrowing through a money pool if it is determined that it could (and had authority to) effect a borrowing at a lower cost directly from banks.

The operation of the money pools is designed to match, on a daily basis, the available cash and short-term borrowing requirements of the participants. To the extent necessary, IEC and Alliant will use the proceeds of external borrowings, up to Commission approved limits, to accommodate the short-term requirements of participants. Requirements satisfied by the money pools will be in the form of open account advances and will not exceed the approved limits contained in the financing program of IEC, Alliant and the other subsidiaries that may be subsequently authorized by the Commission.

IEC and Alliant will participate in the money pools only insofar as they have funds available for lending, either through internally generated or from external sources. Under no circumstances will IEC or Alliant be permitted to borrow funds available through the money pools. If at any time there are funds remaining in the money pools after satisfaction of the borrowing needs of the participating subsidiaries, Services, as the manager of the money pools, will invest these funds appropriately and consistent with applicable state and federal regulations and allocate the earnings of the investments between or among those applicants within each money pool according to the amount of excess funds provided by each respective applicant. The return on the funds loaned by a subsidiary into either of the money pools will essentially be equal to the cost of borrowing from the money pools. The applicable interest rate will be the average for the month of the CD yield equivalent of the 30 day Federal Reserve ''AA'' Industrial Commercial Paper Composite Rate (''Composite'') or, if no Composite were established for that particular day, then the applicable rate would be the Composite for the next preceding day for which the Composite was established.

All borrowings from and contributions to the money pools will be adequately documented and will be evidenced on the books of each applicant that is borrowing or contributing funds through the money pools. All loans will be payable on demand, may be prepaid by any borrowing applicant at any time without premium or penalty and will be subject to interest that shall be calculated and added to the outstanding loan balance. These rates will be adjusted periodically and any participating subsidiary that contributes funds to a money pool may withdraw them at any time to satisfy its daily need for funds.

Services proposes to administer the Utility Pool on an ''at cost'' basis and to administer the Nonutility Pool on a basis other than cost. Services will also provide cash management and banking services to the subsidiaries of IEC that participate in the money pools.

IEC proposes to enter into guarantees, obtain letters of credit, enter into guarantee-type expense agreements or otherwise provide credit support to the obligations of its nonutility subsidiaries as may be appropriate to enable those companies to carry on in the ordinary course of their respective business in an aggregate principal amount not to exceed $600 million outstanding at any one time.

Columbia Energy Group, et al. (70–9365)

Columbia Energy Group (''Columbia''), a registered holding company, and its wholly owned subsidiary Columbia Electric Corporation (''Columbia Electric''), both located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 87(b)(1), 90, and 91 under the Act.

Columbia proposes to acquire indirectly, through Columbia Electric, a 50% interest in a congeneration facility

[4] Alliant has two unsecured credit facilities totaling $600 million and IEC has a $150 million credit facility. All credit facilities are available for direct borrowing or commercial paper back-up.

(Project Gregory) to be constructed in Gregory, Texas and to issue guarantees in an aggregate amount not to exceed $200 million. Project Gregory is a 550 megawatt electric and steam production facility that, once operational, will be a ''qualifying facility'' under the Public Utility Regulatory Policies Act of 1978 and rules thereunder.

In June, 1998, Columbia Electric and LG&E Power Inc. (''LG&E'') entered into an agreement to participate in the development, construction, start-up, operation, maintenance, financing, and ownership of Project Gregory. The assets of Project Gregory will be held by Gregory Power Partners, L.P., a special purpose limited partnership that will be jointly owned by subsidiaries of Columbia Electric and LG&E. Columbia Electric Gregory General Corporation will hold a 1% interest as a general partner of Gregory Power Partners, L.P. and Columbia Electric Gregory Limited Corporation will hold a 49% interest as a limited partner on behalf of Columbia Electric. LG&E Power Gregory IV, Inc. will hold a 1% interest as a general partner and LG&E Power Gregory I, Inc. will hold a 49% interest as a limited partner on behalf of LG&E.

A second special purpose entity, Gregory Partners, LLC will provide administrative and advisory services to Project Gregory. Columbia Electric Gregory Remmington Corporation will hold a 1% interest as member-manager, and Columbia Electric Gregory Member Corporation will hold a 49% interest as a member of Gregory Partners, LLC on behalf of Columbia Electric. LG&E Power Gregory II, Inc. will hold a 1% interest as a member-manager, and LG&E Power Gregory III, Inc. will hold a 49% interest as a member of Gregory Partners, LLC on behalf of LG&E.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29972 Filed 11–6–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23516; File No. 812–11128]

The Wright Managed Blue Chip Series Trust, et al.; Notice of Application

November 2, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of The Wright Managed Blue Chip Series Trust and any similar investment companies for which Wright Investors' Service, Inc., or any of its affiliates may in the future serve as investment adviser, administrator, principal underwriter or sponsor to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated participating life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

Applicants: The Wright Managed Blue Chip Series Trust (the ''Trust'') and Wright Investors' Service, Inc. (''Wright'' or ''the Adviser'').

Filing Dates: The application was filed on April 27, 1998, and amended on August 6, 1998, and October 9, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested Persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 27, 1998, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and this issues contested, Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Mr. A. M. Moody III, Wright Investors' Service, Inc., 1000 Lafayette Boulevard, Bridgeport, Connecticut 06604.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: the following is a summary of the application. the complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC (tel. (202) 942–8090).

Applicants' Representations

1. the Trust is organized as a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company. It currently consists of three separate investment portfolios (''Portfolios''), each with its own investment objectives and policies.

2. Wright, a registered investment adviser under the Investment Adviser Act of 1940, is the investment adviser for each Portfolio.

3. the Trust will offer shares of its Portfolios to separate accounts of insurance companies to serve as the investment medium for variable annuity contracts and variable life insurance policies, as well as to qualified pension and retirement accounts and other appropriate investors.

4. The Trust and any other similar investment companies that the Adviser or any of its affiliates may manage or serve as investment adviser, administrator, principal underwriter or sponsor for in the future (the Trust and such similar investment companies are collectively referred to herein as the ''Funds'') would offer shares to separate accounts that are registered under the 1940 Act as unit investment trusts (''Separate Accounts'') and that serve as investment vehicles for variable insurance contracts issued by affiliated and unaffiliated participating life insurance companies. Variable insurance contracts may include variable annuity contracts, variable life insurance contracts and variable group life insurance contracts. Separate accounts to which the shares of the Funds would in the future be offered also include separate accounts that are not registered as investment companies under the 1940 Act pursuant to the exceptions from registration in Sections 3(c)(1) and 3(c)(11) of the 1940 Act. In addition, the Funds may offer shares to separate accounts serving as investment vehicles for other types of insurance products, which may include variable annuity contracts, scheduled premium variable life insurance contracts, single premium variable life insurance contracts, modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts. (All insurance contracts reference in this paragraph are collectively referred to as ''Variable Contracts.'' insurance companies whose separate account or accounts would own share of the Funds are referred to as ''participating insurance companies.'')

5. The Funds also intend to offer shares directly to Qualified Plans

described in Treasury Regulation § 1.817–5(f)(3)(iii).

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) thereof, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to: (a) permit ''mixed'' and ''shared'' funding as defined below; and (b) allow shares of the Funds to be sold to and held by Qualified Plans.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such 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 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through Separate Accounts, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Separate Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies is referred to as ''shared funding.''

4. The relief granted by Rule 6e–2(b)(15) is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to separate accounts, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Plans.

5. In connection with the funding of flexible premium variable life insurance contracts issued through a Separate Account, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T) are available only where the Separate Account's underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied). Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief granted by Rule 6e–3(T) also is in no way affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Plans.

7. Section 9(a) of the 1940 Act provides that it is unlawful for any person to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that person is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provides exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert, therefore, that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of the eligibility restrictions of Section 9(a) because of mixed funding or shared funding.

9. Applicants state that the relief requested herein will not be affected by the proposed sale of shares of the Funds to Qualified Plans because the Qualified Plans are not investment companies and will not be deemed to be affiliates by virtue of their shareholdings in the Funds.

10. Sections 13(a), 15(a) and 15(b) of the 1940 Act require ''pass-through'' voting with respect to management investment company shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from the pass-through voting requirement. More specifically, the Rules provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to other provisions of Rules 6e–2 and 6e–3(T)).

11. Rules 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance

regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. Applicants assert that the Commission therefore deemed such exemptions necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

12. Applicants further represent that the Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Funds sold to such Plans would be held by the trustees of such Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the assets of the plan, with two exceptions: (a) when the plan expressly provides that the trustee(s) is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such plans. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

13. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants submit that the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in the affected Fund. This requirement will be provided for in agreements that will be entered into by participating insurance companies with respect to their participation in the Funds.

15. Rules 6e–2(b)(15) and 6e[3(T)(b)(15) permit an insurance company to disregard contract owners' voting instructions. Applicants submit that this does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants note that Rules 6e–2 and 6e–3(T) both require that disregard of voting instructions by an insurance company be reasonable and based on specific good faith determinations. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at a Fund's election, to withdraw its separate account's investment in such Fund. No charge or penalty would be imposed as a result of such withdrawal.

16. Applicants submit that there is no reason why the investment policies of the Funds providing mixed funding would or should be materially different from what those policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. In this regard, Applicants note that each type of variable insurance product is designed as a long-term investment program. In addition, each Fund will be managed to attempt to achieve the Fund's investment objective or objectives, and not to favor or disfavor any particular participating insurer or type of variable insurance product.

17. Furthermore, Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An underlying fund supporting even one type of insurance produce must accommodate these diverse factors in order to attract and retain purchasers.

18. Applicants note that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury Regulations, nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

19. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Funds at their respective net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan, and the life insurance company will make distributions in accordance with the terms of the Variable Contract.

20. With respect to voting rights, Applicants submit that it is possible to provide an equitable means of giving such voting rights to Separate Account contract owners and to the trustees of Qualified Plans. Applicants represent that the transfer agent for the Funds will inform each participating insurance company of its share ownership in each Separate Account, as well as inform the trustees of Qualified Plans of their

holdings. Each participating insurance company will then solicit voting instructions in accordance with the ''pass-through'' voting requirements of Rules 6e–2 and 6e–3(T).

21. Applicants argue that the ability of the Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term if defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants under the Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective sharesof the Funds. Such shares may be redeemed only at their net asset value. No shareholder of any of the Funds will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

22. Applicants submit that there are no conflicts between the contract owners of the Separate Accounts and the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem shares of one underlying fund held by their separate accounts and invest in another underlying fund. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of qualified Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even if there should arise issues where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be resolved almost immediately because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Funds.

23. Applicants submit that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance policies. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. Applicants submit that use of the Funds as a common investment medium for Variable Contracts would help alleviate these concerns. Applicants submit that mixed and shared funding also should benefit variable contract owners by: eliminating a significant portion of the costs of establishing and administering separate funds; creating a greater amount of assets available for investment by the Funds, thereby promoting economies of scale which permit increased safety of investments through greater diversification and make the addition of new portfolios more feasible; and encouraging more insurance companies to offer Variable Contracts, which should result in increased competition with respect to both the design and pricing of Variable Contracts, which, in turn, can be expected to result in more product variation and lower charges.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the board of trustees (''Board'') of each of the Funds will consist of persons who are not ''interested persons'' of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission. However, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee(s), then the operation of this condition will be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a note of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict among the interests of the contract owners of all Separate Accounts investing in the Funds and all other persons investing in the Funds, including Qualified Plans. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no action or interpretative letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating insurance companies and any Qualified Plan that executes a participation agreement with a Fund (collectively, ''Participating Parties'') and the Adviser will report any potential or existing conflicts of which it becomes aware to the Board of the relevant Fund. Participating Parties and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties under their participation agreements and these agreements will provide that these responsibilities will be carried out with a view only to the interests of the contract owners and Qualified Plan participants.

4. If it is determined by a majority of the Board of a Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant Participating Parties will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. These steps may include: (a) withdrawing the assets allocable to some or all of the Separate Accounts of the participating insurance companies from the affected Fund or any series thereof and reinvesting these assets in a different investment medium (including another series, if any, of such Fund) or submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the participating Qualified Plans from the

relevant Fund and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its Separate Account's investment in the Fund, and no change or penalty will be imposed as a result of the withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Parties under their participation agreements and these responsibilities will be carried out with a view only to the interests of the contract owners and participating in Qualified Plans, as applicable.

5. For the purposes of condition (4), a majority of the disinterested members of the Board of the affected Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Variable Contract or Qualified Plan. No participating insurance company will be required by condition (4) to establish a new funding medium for any Variable Contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be make known promptly in writing to the Adviser and all Participating Parties.

7. As to Variable Contracts issued by Separate Accounts, participating insurance companies will provide pass-through voting privileges to all participants so long as and to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting privileges for Variable Contract owners. As to Variable Contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to participants to the extent granted by the issuing insurance company. Participating insurance companies will be responsible for assuring that each of their registered Separate Accounts participating in a Fund calculate voting privileges as instructed by a Fund with the objective that each such participating insurance company calculate voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund will be a contractual obligation of all participating insurance companies under their participation agreements. Each participating insurance company will vote Fund shares held by Separate Accounts for which it has not received voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the Fund's shares). In particular the Funds will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or, if annual meetings are not held, comply with Section 16(c) of the 1940 Act (although the Trust is not, and the Funds may not be, one of the trusts described in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic election of Trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Funds will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its registration statement that: (a) shares of the Fund are offered to insurance company separate accounts offered by various participating insurance companies which fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences in tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund might at some time conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken in response to a conflict.

10. No less often than annually, the Participating Parties and/or the Adviser will submit to the Boards such reports, materials or data as each Board may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. These reports, materials, and data will be submitted more frequently if deemed appropriate by the relevant Board. The obligations of the Participating Parties to provide these reports, materials and data to the Boards will be contractual obligations of all Participating Parties under the participation agreements.

11. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying the Adviser or Participating Parties of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and these minutes or other records will be made available to the Commission upon request.

12. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from those of any exemptions granted in the order requested in this application, then the Funds and/or the Participating Parties, as appropriate, will take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent these rules are applicable.

13. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will execute a participation agreement with the Fund. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of each Fund.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29862 Filed 11–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40626; File No. SR–Amex–98–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Index-Linked Term Notes

November 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 under the Act,[2] notice is hereby given that on October 13, 1998, the American Stock Exchange, Inc. (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange seeks to list and trade separate Index-linked Term Notes (''Notes''). The value of each Note will be linked to an index comprised of a single specified domestic mutual fund portfolio (''Index'' or collectively ''Indexes'').

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Exchange's *Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the Exchange's listing criteria for common and preferred stock, bonds, debentures, or warrants.[3] The Exchange seeks to list Index-linked Term Notes, each of which shall be separately linked to a specified domestic mutual fund portfolio Index.[4] The mutual fund portfolios underlying the Indexes will be registered under the Investment Company Act of 1940.

The Index-linked Term Notes will be senior, unsecured debt securities that will conform to the listing guidelines under Section 107A of the *Company Guide*.[5] Although a specific maturity date will not be established until the time of the offering, the Notes will provide for a maturity of between two and seven years from the date of issuance. Each note may provide for payments at maturity based in whole or in part on changes in the value of the corresponding Index. Each Index will measure the total return of the corresponding mutual fund portfolio. The total return value shall reflect the changes in the Net Asset Value (''NAV'') of the corresponding mutual fund portfolio, plus any cash dividends and/or distributions paid on those shares.[6]

The Exchange will calculate the value of each Index once each business day. Holders of the Notes will not receive any interest payments. However, holders of the Notes will receive at maturity the full principal amount of their Notes, plus a ''Supplemental Redemption Amount,'' if any, based on a formula to be set forth in the prospectus. The Exchange notes that the formula may produce a total return at maturity that is lower than what a holder of the corresponding mutual fund portfolio might receive during the same period. At maturity, holders of the Notes will not receive less than 100% of the initial issue price.

a. *Description of the Index-linked Term Notes and the Underlying Mutual Fund Portfolios.* Similar to other notes linked to an index that trade on the Exchange, both the issue (Index-linked Term Notes) and the issuer will meet the general criteria set forth in Section 107A of the Exchange's *Company Guide*. Furthermore, the Exchange has represented that the issuer will have a minimum tangible net worth in excess of $100,000,000 and otherwise substantially exceeds the earnings requirements set forth in Section 101 of the Exchange's *Company Guide*.[7] Each mutual fund portfolio underlying an Index will include hundreds of stocks from among a wide variety of industry groups. The underlying mutual fund portfolios will range in value from $900 million to over $2 billion in total net assets. The NAV of each mutual fund portfolio will be reported each business day through the facilities of the National Association of Securities Dealers Automated Quotation System (''Nasdaq'') and also will be reported in the Mutual Fund Tables of the Wall Street Journal and other newspapers. The Notes will be subject to the suspension and delisting policies of the Exchange set forth in Part 10 (Sections 1001–1011) of the Exchange's *Company Guide*.[8]

b. *Calculation and Dissemination of Net Asset Values and Index Values.* Each Index will measure the total return of its underlying mutual fund portfolio. Such amount shall be equal to the change in the mutual fund's NAV, plus

[3] *See* Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[4] The Exchange notes that the Commission recently approved a similarly structured product for listing and trading on the Exchange—Market Index Target Term Securities linked to the Merrill Lynch EuroFund Index. *See* Exchange Act Release No. 40367 (Aug. 26, 1998), 63 FR 47052 (Sept. 3, 1998).

[5] Section 107A of the Exchange's *Company Guide* states that the Exchange will consider listing any security not otherwise covered by the Exchange's listing requirements, provided the security is suited for auction market trading and satisfies the following criteria:

(a) Assets/Equity: The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the earnings criteria set forth in Section 101 (*i.e.*, pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years), the Exchange generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

(b) Distribution: Minimum public distribution of 1,000,000 trading units with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(c) Principal Amount/Aggregate Market Value: Not less than $4 million.

[6] As discussed *infra* in Section II(A)(1)(c), ''Settlement of Index-linked Term Notes,'' the total return value may be reduced by an adjustment factor.

[7] Section 101 of the Exchange's *Company Guide* requires that an issuer have pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[8] Under Section 1003(b)(iii) of the Exchange's *Company Guide*, the Exchange may consider delisting debt securities if the aggregate market value or the principal amount of debt securities publicly held is less than $400,000 or, the issuer is not able to meet its obligations on the listed debt securities.

any cash dividends and/or distributions paid on the mutual fund portfolio shares. The value for each Index will be disseminated once a day over the Consolidated Tape Association's Network B. If any mutual fund portfolio does not comply with Rule 22c–1 of the Investment Company Act of 1940,[9] which requires daily computation of a fund's current NAV, the Exchange will use the last available NAV in its calculation of the Index.

c. *Settlement of Index-linked Term Notes.* The Notes will be settled at maturity by either a cash payment or by delivering shares in the corresponding mutual fund portfolio, at the determination of the issuer. The value of the Notes at maturity will be equal to the principal amount of such Notes plus a Supplemental Redemption Amount. The Supplemental Redemption Amount, which may not be less than zero, will equal the principal amount of such Note multiplied by the percentage difference between the Adjusted Ending Index Value and the Starting Index Value. The Adjusted Ending Index Value means the ending value of the Index [10] reduced by an adjustment factor, if any, to be set forth in the prospectus.

d. *Other Exchange Rules Applicable to Index-linked Term Notes.* Because the Notes are linked to a portfolio of equity securities, the Exchange's existing equity floor trading rules and standard equity trading hours (9:30 A.M. to 4:00 P.M., Eastern Standard Time) will apply to the trading of the Notes. Further, the Notes will be subject to the equity margin rules of the Exchange.[11]

Pursuant to Exchange Rule 411, ''Duty to Know and Approve Customers,'' the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. In addition, consistent with Exchange practices regarding other structured products, the Exchange will distribute an informational circular to its membership prior to the commencement of trading in the Notes to provide guidance regarding member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in a Note, such member or member organization should make a determination that the Note is suitable for such customer. As part of that determination, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and that the customer is financially able to bear the risk of the recommended transaction. Lastly, as with other structured products, the Exchange will closely monitor trading activity in the Notes to identify and deter any potential improper trading activity in the Notes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not 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

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–37 and should be submitted by November 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29973 Filed 11–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40628; File No. SR–BSE–98–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to its Fee Schedule

November 2, 1998.

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 October 29, 1998,[3] the Boston Stock Exchange

[9] 17 CFR 270.22c–1.

[10] The ending value of the Index shall represent the average of the values of the Index during a period prior to the stated maturity as specified in the prospectus.

[11] *See* Exchange Rule 462, ''Minimum Margins.''

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The BSE initially submitted this filing on October 1, 1998; however, it did not comport with the requirements of Rule 19b–4 under the Act, and, therefore, the BSE resubmitted the filing.

(''Exchange'' or ''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. 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 Exchange proposes to waive Specialist Transaction fees for all BSE executed, automated order flow for the month of September, 1998.

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 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

1. Purpose

The purpose of the proposed rule change is to waive Specialist Transaction fees for the month of September 1998 to provide the Exchange's specialist community, which has borne additional costs associated with attracting order flow to the Exchange, with a reduction in transaction fees as a result of the Exchange's increased revenue stream for the fiscal year.

2. Basis

The basis for the proposed rule change is Section 6(b)(5) of the Act,[4] in that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charges imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(e)(2)[6] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–98–8 and should be submitted by November 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29969 Filed 11–6–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40627; File No. SR–NASD–97–89, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Bond Mutual Fund Volatility Ratings

November 2, 1998.

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 December 12, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly-owned subsidiary, the NASD Regulation, Inc. (''NASD Regulation'' or ''NASDR'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On October 5, 1998, NASDR filed Amendment No. 1 which replaces and supersedes the initial proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as contained in Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 12, 1997, the NASDR submitted its initial proposal which could have limited the effectiveness of the disclosure statement and prevented sales literature from containing relevant explanatory information concerning bond mutual fund volatility ratings. After discussions between NASDR and the Commission, the NASDR filed Amendment No. 1 on October 5, 1998. The revised proposal will: (1) permit ratings to be provided by non-NRSROs; (2) permit funds to provide additional information in the disclosure statement if the information would help investors understand the rating; (3) permit funds to combine information about different ratings when the information is the same for each rating; (4) clarify the prohibition against using ratings that are based on subjective factors; and (5) require the use of the most recently issued rating.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing rules that add a new interpretation to Rule 2210 of the Conduct Rules of the NASD to permit the use by members and associated persons of bond mutual fund volatility ratings in supplemental sales literature on an interim 18 month pilot basis. Proposed new language is in italics.

IM– . Requirements for the Use of Bond Mutual Fund Volatility Ratings

(This rule will expire on [18 months from approval], unless extended or permanently approved by the Association at or before such date)

(a) Definition of Bond Mutual Fund Volatility Ratings

For purposes of this Rule and any interpretation thereof, the term ''bond mutual fund volatility rating'' is a description issued by an independent third party relating to the sensitivity of the net asset value of a bond mutual fund portfolio to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

(b) Prohibitions on Use

Members and persons associated with a member may use a bond mutual fund volatility rating only in supplemental sales literature and only when the following requirements are satisfied:

(1) The rating does not identify or describe volatility by use of a single symbol, number or letter, and the rating is not described as a ''risk'' rating.

(2) The supplemental sales literature incorporates the most recently available rating and reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.

(3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. Any other factors, such as an analysis of investment philosophy or quality of the fund's management, may be considered solely for purposes of determining whether to issue the rating. The rating and the Disclosure Statement that accompanies the rating must be clear, concise, and understandable.

(4) The supplemental sales literature conforms to the disclosure requirements described in paragraph (c).

(5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both.

(c) Disclosure Requirements

(1) Supplemental sales literature containing a bond mutual fund volatility rating shall include a Disclosure Statement containing all the information required by this Rule. The Disclosure Statement may also contain any additional information that is relevant to an investor's understanding of the rating.

(2) Supplemental sales literature containing a bond mutual fund volatility rating shall contain all current bond mutual fund volatility ratings that have been issued with respect to the fund. Information concerning multiple ratings may be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear.

(3) All bond mutual fund volatility ratings shall be contained within the text of the Disclosure Statement. The following disclosures shall be provided with respect to each such rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating, with an explanation of the reason for any change in the current rating from the most recent prior rating;

(C) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures (e.g., short-term volatility);

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

* * * * *

2200. Communications With Customers and the Public

2210. Communications With the Public

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(c) Filing Requirements and Review Procedures

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(3) Sales literature concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule IM–__, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the sales literature has been refiled for, and has received, Association approval. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. The member must provide with each filing the actual or anticipated date of first use. Any member filing sales literature pursuant to this paragraph shall provide any supplemental information requested by the Department pertaining to the rating that is possessed by the member.[4]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR 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. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

Bond mutual fund volatility ratings are descriptions of the sensitivity of bond mutual fund portfolios to changing market conditions. The rating agencies and information vendors that issue such ratings are not NASD member firms, and mutual fund groups that purchase the ratings use them for promotional and

[4] NASDR proposes to add this language to the existing test of Rule 2210(c). The existing sections of this rule will remain unchanged and will be renumbered, beginning with Rule 2210(c)(3)(A). Telephone conversation between Robert J. Smith, Office of General Counsel, NASD Regulation, Inc., and Mignon McLemore, Division of Market Regulation, Commission, on October 30, 1998.

marketing purposes. NASD rules do not apply to the use and dissemination of bond mutual fund volatility ratings by non-members.

Currently, NASD Regulation interprets its rules to prohibit the use by members and associated persons of bond mutual volatility ratings in supplemental sales literature. The prohibition is based on the analysis that judgments of how a bond mutual fund may react to changes in various market conditions may be predictive of fund performance or misleading and, therefore, prohibited for use by members and associated persons in sales literature.[5]

In Notice to Members 96–84 (December 1996) (''NTM 96–84''), NASD Regulation requested comment on the appropriations of its current prohibition. A majority of the commenters supported making the ratings available, and all of the commenters representing investor groups supported the goal of making accurate information regarding risk and volatility characteristics of bond funds available to investors.

On April 30, 1997, the Legal Advisory Board of the NASD (''LAB'') reviewed and discussed bond fund volatility ratings. NASD Regulation staff proposed to the LAB that an alternative to the current prohibition would be permitting the use of bond fund volatility ratings subject to appropriate guidelines. After extended discussion, the LAB favored allowing volatility ratings to be used subject to guidelines containing sufficient prohibitions and disclosure requirements.

At its September 1997 Board meeting, NASD Regulation considered issues regarding bond mutual fund volatility ratings and adopted resolutions: (i) Affirming that investors can benefit from the availability of such information, (ii) directing the staff to draft bond fund volatility rating regulatory proposals to best serve the public interest and address the differences among interested parties, for presentation at the November Board meeting, and (iii) appointing Directors Theodore A. Levine and A.A. Sommer, Jr. (''Subcommittee'') to assist the staff in this effort. After the September Board meeting, NASD Regulation staff and the Subcommittee met and worked to reach a solution that was sensitive to and reflective of the concerns and differences of all interested parties.

At its November 1997 Board meeting, NASD Regulation approved: (i) A modification to NASD Regulation's current prohibition on the use of bond mutual fund volatility ratings in supplemental sales literature to permit such use by members and associated persons according to proposed rules designed to prevent such ratings from being misleading, predictive, or otherwise inappropriate, and (ii) the submission of the proposed rules to the SEC for approval.

At its December 1997 Board meeting, the NASD ratified the NASD Regulation Board's approval of the proposed rules, without change, and their submission to the SEC for approval.

At its August 1998 Board Meeting, NASD Regulation approved amendments to the proposed rule change as originally filed with the SEC, and the submission of the amendments to the SEC for approval. The amendments, incorporated in this submission: (i) Delete the requirement that ratings be issued exclusively by nationally recognized statistical rating organizations; (ii) add the requirement that the rating and the Disclosure Statement be clear, concise, and understandable; (iii) permit the Disclosure Statement to contain any additional information that is relevant to an investor's understanding of the rating; (iv) permit repetitive information in multiple ratings for the same fund to be combined in the Disclosure Statement, provided the applicability of the information to each rating is clear; and (v) delete the requirement to use a ''Required Disclosure Statement.''

Description

Trial Period. The proposed rule change would permit, on an 18-month pilot basis, the use of the ratings in conformance to rules that prohibit the use of ratings unless certain requirements and disclosures are met. After the 18-month trial term, the rules would be evaluated to determine their efficacy in ensuring that comprehensible and useful information is provided to investors, and in preventing the dissemination of inappropriate or misleading information by members and associated persons. After the evaluation, the staff will consider all options, including prohibiting the use of ratings, permitting their use or permitting their use with modifications to the rule.

Definition of Bond Mutual Fund Volatility Rating. Paragraph (a) of the proposed rule change defines the term ''bond mutual fund volatility rating'' to mean, in part, a description issued by an independent third party relating to the sensitivity of a bond mutual fund's net asset value to changes in market conditions and the general economy, based on an evaluation of objective factors regarding the fund's current characteristics and its past performance. The definition recognizes that the rating is an opinion of a fund's potential share price movement in response to various economic conditions or market situations, and not a prediction of the actual movement of a fund's share price. The definition applies only to bond mutual fund volatility ratings provided by an independent third party. However, NASD Regulation understands that many mutual fund complexes currently provide various descriptions of risk and volatility for their own funds. These descriptions may involve some of the same processes and considerations that are used by independent rating agencies. NASD Regulation specifically solicits comment on whether such descriptions are similar in derivation and purpose to ratings that are issued by independent agencies, and whether their use in supplemental sales literature by members and their associated persons should also be subject to the provisions of the proposed rule change.

Prohibitions. Subparagraph (b) of the proposed rule change permits members and associated persons to use a bond mutual fund volatility rating only in supplemental sale literature and only when certain requirements are satisfied.

Subparagraph (b)(1) of the proposed rule change prohibits the use of a bond mutual fund volatility rating that identifies or describes volatility by use of a single symbol, number or letter. At the same time, the proposed rules refrain from imposing a specific standard on descriptions or calculations in recognition of the fact that there is no specified or uniform range of information used by all rating entities, and that rating entities should be free to develop completing methods and models of assessing volatility. Subparagraph (b)(1) also prohibits the use of a bond mutual fund volatility rating that uses the word ''risk'' to describe the rating. Because the word ''risk'' is capable of multiple meanings and interpretations, NASD Regulation believes that it is more accurate to refer to such ratings as ''volatility'' rather than ''risk'' ratings.

Subparagraph (b)(2) of the proposed rule change prohibits the use of a bond mutual fund volatility rating that does not incorporate the most recently available rating and is not current to the most recent calendar quarter ended prior to use. This prohibition is intended to ensure that stale or dated

[5] NASD Conduct Rule 2210 prohibits the use by members and associated persons of information that is misleading, that contains exaggerated, unwarranted or misleading statements or claims, or that predicts or projects investment results.

ratings are not provided to investors and reflects a common denominator time frame that can be used by rating entities currently to update their ratings.

Subparagraph (b)(3) of the proposed rule change prohibits the use of a bond mutual fund volatility rating that is not based exclusively on objective, quantifiable factors. Non-quantifiable, subjective factors, such as an analysis of investment philosophy and quality of the fund's management[6] could be considered solely for purposes of determining whether to issue the rating. Eliminating subjectivity from the volatility calculation reduces the potential variability of ratings, and thus helps eliminate the ability of funds to ''shop around'' for the most favorable rating.

Subparagraph (b)(3) of the proposed rule change also requires that the rating and the Disclosure Statement that accompanies it be clear, concise, and understandable. This addresses the need to deliver the rating information in a way that is accessible and informative.

Subparagraph (b)(4) of the proposed rule change prohibits the use of bond mutual fund volatility rating unless the supplemental sales literature containing the rating conforms to the disclosure requirements.

Subparagraph (b)(5) of the proposed rule change prohibits the use of a bond mutual fund volatility rating unless the entity that issued the ratings provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both. NASD Regulation believes that access to such supplemental information will enable investors to obtain answers to question regarding the meaning of the rating or how it is calculated or derived.

Disclosure Requirements. Paragraph (c) of the proposed rule change requires that certain disclosures accompany any bond mutual fund volatility rating used in supplemental sales literature by members or associated persons of members.

Subparagraph (c)(1) requires that supplemental sales literature containing a bond mutual fund volatility rating include a Disclosure Statement containing all the information required by the rule, but also permits the Disclosure Statement to contain any additional information that is relevant to an investor's understanding of the rating. Permitting the Disclosure Statement to contain additional relevant information could help explain the meaning of the rating. In particular, supplemental sales literature that contains multiple ratings could benefit from additional information that could distinguish and clarify different methodologies and measurements of volatility.

Subparagraph (c)(2) requires that supplemental sales literature containing a bond fund volatility rating contain all other current volatility ratings that have been issued with respect to the same fund. Subparagraph (c)(2), however, permits information concerning multiple ratings to be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear. This serves the purpose of avoiding redundant and potentially confusing information, and reduces the possibility that the rating could be buried or hidden in excess information.

Subparagraph (c)(3) requires that all bond mutual fund volatility ratings be contained within the text of the Disclosure Statement. NASD Regulation believes it is important that the rating not be located separately from the Disclosure Statement to avoid the danger that either could be read separately, or not at all, which would increase the possibility that the rating would not be understood in the context of the required disclosures.

Subparagraphs (c)(3)(A)–(B) of the proposed rule change require that supplemental sales literature containing a bond mutual fund volatility rating disclose the name of the rating entity, the most current rating accompanied by the date of the rating and, if there is any change in the current rating from the most recent prior rating, an explanation of the change. NASD Regulation believes it is important for investors to see how a fund's rating may have changed and understand the reasons for the change.

Subparagraph (c)(3)(C) of the proposed rule change requires that supplemental sales literature containing a bond mutual fund volatility rating describe the rating in narrative form. Under subparagraphs (c)(3)(C)(i)–(vii), the narrative description must also include: (i) a statement that there is no standard method for assigning ratings; (ii) a description of the criteria and methodologies used to determine the rating; (iii) a statement that not all bond funds have volatility ratings; (iv) whether consideration was paid in connection with obtaining the issuance of the rating; (v) a description of the types of risks the rating measures, such as short-term volatility, for example; (vi) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

The disclosures required by subparagraphs (c)(3)(C)(i)–(vii) help inform investors of certain potential limitations of a rating (*i.e.*, that a rating may have been paid for, may measure only a certain type of risk or volatility, may not reflect a comparison with all funds of a given class or peer group, and may not be current).

NASDR intends to include in the NTM that will accompany publication of the final rule the following Disclosure Statement as a sample to assist members in drafting Disclosure Statements that comply with the requirements of the rule:

> The volatility rating for this fund issued by [XYZ rating entity] (''XYZ'') is [insert narrative rating]. The rating seeks to measure [description of what risks the rating measures, *e.g.*, ''how the value of the fund's current portfolio might respond to changing market conditions'']. XYZ arrived at his rating in the following way: [insert description of methodology]. There is no standard method for determining volatility ratings. The rating is current as of [date]. The fund's portfolio may have changed since this date and there is no guarantee that the fund will continue to have the same rating or perform in the future as rated. Not all bond mutual funds have volatility ratings and those that do may have paid for them. The fund [paid for][did not pay for] the volatility rating issued by XYZ. The fact that a fund has a rating is not an indication that it is more or less risky or volatile than a fund that does not. If you would like more specific information on the rating or the methodology used to determine the rating, call XYZ at 1–800–000–000 or visit XYZ's web site address at www.[address].

Filing Requirement. The proposed rule change amends NASD Rule 2210 regarding communications with the public by adding new subparagraph (c)(3) to require sales literature containing bond mutual fund volatility ratings to be filed with the Advertising Regulation Department for review and approval at least 10 days prior to use. Members would not be required to file advertising and sales literature which had previously been filed and approved, and used without change. Members filing sales literature containing bond mutual fund sales literature also must provide any supplemental information requested by the Department pertaining to the rating that is possessed by the member.

NASD Regulation believes that the proposed rule change is consistent with

[6] Volatility or risk rating analysis has been described as being comprised of three elements: (i) an analysis of the effective duration of the fund's current portfolio—*i.e.*, the sensitivity of the current portfolio to interest rate changes, (ii) a comparison of the historical risk profile of the bond fund with the risk of its current portfolio, and (iii) an assessment of the fund manager's policies and management style, including whether management has established policies and systems that comport with stated objectives for the fund, including levels of risk.

the provisions of Section 15A(b)(6)[7] of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest. The proposed rule change, by imposing certain prohibitions, disclosure and filing requirements, is designed to permit members and associated persons of a member to disseminate bond mutual fund volatility ratings in supplemental sales literature according to standards designed to prevent such ratings from being misleading, predictive, or otherwise inappropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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. However, NTM 96–84 requested comment on the appropriateness of the NASDR's current prohibition on the use by members and persons associated with a member of bond mutual fund volatility ratings in supplemental sales literature. A copy of NTM 96–84 and a summary of the comments received in response to NTM 96–84 are available for inspection and copying in the Commission's Public Reference Room.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to 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, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29970 Filed 11–6–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40625; File No. SR–PHLX–98–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of a Pilot Program for a System Enhancement to the X-Station Electronic Book on the Options Floor

November 2, 1998.

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 October 6, 1998, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On a pilot basis, the Phlx previously implemented an enhancement to its X-Station electronic book. The Exchange seeks to extend that pilot through April 23, 1999.[3] Under the pilot, a system enhancement was made to the X-Station electronic book on the options floor, which matches incoming orders eligible for the Automatic Execution System (''AUTO–X'') feature of the Phlx Automated Options Market (''AUTOM'') system with orders residing on the specialist's book.

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 places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 24, 1998, the Exchange filed with the Commission a proposed rule change to implement, on a pilot basis, an enhancement to the X-Station electronic book on the Exchange's options floor, which became effective immediately upon filing.[4] As described in Phlx Rule 1080, Commentary .02, the electronic order book is an automated mechanism for specialists to hold and display orders based on price/time priority. The Exchange is currently preparing floor-wide deployment of the new X-Station electronic book on the options floor. The new X-Station provides certain improvements such as expedited non-AUTO–X order execution, as well as expedited cancel replacement processing.

AUTO–X is the automatic execution feature of the AUTOM System, the electronic order delivery and routing system for options orders. Previously,

[3] Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Anitra T. Cassas, Attorney, Division of Market Regulation, Commission, dated October 21, 1998.

[4] Exchange Act Release No. 39972 (May 7, 1998) 63 FR 26666 (May 13, 1998).

AUTO–X orders were executed against a ''shadow account'' for which the specialist was ultimately responsible. The execution was immediately reported back to the sending firm and the specialist was then required to manually input the contra-side interest representing the booked order that became due as a result of the AUTO–X trade.

At this time, the Phlx proposes to extend the pilot program, a system enhancement to the electronic book that matches incoming AUTO–X orders with booked orders, for an additional six months. The matching ability allows the specialist to match two participants directly, without the specialist participating in the trade, by dropping the order to manual status. The match is not automatic, as the specialist must ensure that crowd participation under current parity/priority rules is not due before executing the trade; thus, the specialist must ''select'' the orders to execute the trade. Since the AUTO–X order drops to manual status (meaning it is not automatically executed), the sending firm will only receive an execution report after the specialist selects and executes the trade.

The enhancement implemented through the current pilot program affords specialists relief from the manual burden of inserting trade participant and clearing information by writing an order ticket for the booked order. Without the X-Station itself, the booked order appeared on an actual order ticket, which the specialist submitted for key punch entry. Thus, implementing the X-Station without the matching feature is more burdensome than the process required without the existence of the X-Station because the X-Station requires more ticket-writing. The enhancement has reduced the amount of paper processed on the options floor, which in turn has reduced handling and processing time, including the likelihood of errors, thereby facilitating more prompt and accurate trade reporting.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency through automation in the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e)(5) of Rule 19b–4 thereunder.[8] The proposal effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. 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–98–41 and should be submitted by November 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29974 Filed 11–6–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(5).

[9] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 2920]

Extension of Passport Validity

In accordance with the Immigration and Nationality Act, an alien who makes an application, either for a visa or for admission into the United States, is required to possess a passport that: (1) Is valid for a minimum of six months beyond the date of the expiration of the initial period of the alien's admission into the United States or contemplated initial period of stay and, (2) authorizes the alien to return to the place from which he or she came, or to proceed to and enter some other country during such period. Because of the foregoing requirement, certain competent authorities have agreed that their passports will be recognized as valid for the return of the bearer for a period of six months beyond the expiration date specified in the passport, thereby effectively extending the validity period of the foreign passport an additional six months beyond its expiration date.

This public notice adds Slovenia to the list of countries that have concluded passport-extension agreements with the Government of the United States. In addition, the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States have reached such an agreement with respect to passports issued by their respective authorities. The updated list of competent authorities is set forth below:

Table of Foreign Passports Recognized for Extended Validity

ALGERIA
ANTIGUA & BARBUDA
ARGENTINA
AUSTRALIA
AUSTRIA
BAHAMAS, THE
BANGLADESH
BARBADOS
BELGIUM
BRAZIL
CANADA
CHILE
COLOMBIA
COSTA RICA
COTE D'IVOIRE
CUBA
CYPRUS
CZECH REPUBLIC
DENMARK
DOMINICA
DOMINICAN REPUBLIC
ECUADOR
EGYPT
EL SALVADOR
ETHIOPIA
FINLAND
FRANCE
GERMANY
GREECE
GRENADA
GUINEA
HONG KONG (Certificates of identity & passports)
HUNGARY
ICELAND
INDIA
IRELAND
ISRAEL
ITALY
JAMAICA
JAPAN
JORDAN
KOREA
KUWAIT
LAOS
LEBANON
LIECHTENSTEIN
LUXEMBOURG
MADAGASCAR
MALAYSIA
MALTA
MAURITIUS
MEXICO
MONACO
NETHERLANDS
NEW ZEALAND
NICARAGUA (Diplomatic & official only)
NIGERIA
NORWAY
OMAN
PAKISTAN
PANAMA
PARAGUAY
PERU
PHILIPPINES
POLAND
PORTUGAL
QATAR
SENEGAL
SINGAPORE
SLOVAK REPUBLIC
SLOVENIA (ADDED)
SOUTH AFRICA
SPAIN
SRI LANKA
ST. KITTS & NEVIS
ST. LUCIA
ST. VINCENT & THE GRENADINES
SUDAN
SURINAME
SWEDEN
SWITZERLAND
SYRIA
TAIWAN (ADDED)
THAILAND
TOGO
TRINIDAD & TOBAGO
TUNISIA
TURKEY
UNITED ARAB EMIRATES
UNITED KINGDOM
URUGUAY
VENEZUELA

Public Notice 2902 of October 9, 1998 issued at 63 FR 54512 is hereby superseded.

Dated: October 24, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–29861 Filed 11–6–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 2923]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Friday, November 13, 1998 at 2:00 p.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 3:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on April 4, 1998 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 1998 through September 30, 1998. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, November 9, 1998, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: October 28, 1998.

Gail F. Serfaty,

Vice Chairman, Fine Arts Committee.

[FR Doc. 98–29860 Filed 11–6–98; 8:45 am]

BILLING CODE 4710–38–M

DEPARTMENT OF STATE

[Public Notice #2928]

Advisory Committee on International Economic Policy; Public Meeting Notice

Members of the Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00–11:30 am on Monday, November 23, 1998, in Room 1105, U.S. Department of State, 2201 C Street, N.W., Washington, DC 20520 to discuss on-going work in the OECD on multilateral rules on investment. The Department regrets shorter notice necessitated by last minute conflicts in schedule of senior officials.

Admittance of public members will be limited to the seating available. As access to the Department of State is controlled, persons wishing to attend the meeting should notify the ACIEP Executive Secretary by Thursday, November 21, 1998.

Each person must provide his or her name, company or organization affiliation, date of birth, and social security number and a valid photo ID (U.S. driver's license with picture, U.S. passport, or U.S. government identification) for entrance into the building at the C Street diplomatic entrance, to the ACIEP Secretariat at (202) 647–5968 or fax (202) 647–5713 (Attn: Sharon Rogers). A list will be made and the Reception personnel will direct attendees to Room 1105.

For further notification or information, contact Sharon Rogers, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520. She may be reached at telephone (202) 647–5968 or fax number (202) 647–5713.

Dated: November 4, 1998.

Alan P. Larson,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 98–30101 Filed 11–5–98; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Sanitary and Phytosanitary Issues

AGENCY: Trade Policy Staff Committee, USTR.

ACTION: Request for written comments on ''Information for Evaluation of the Consistency of Foreign Trade Measures with the Provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.''

SUMMARY: The Trade Policy Staff Committee (TPSC) is publishing a set of questions developed to elicit information on foreign trade measures that may be inconsistent with the provisions of the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). This set of questions, ''Information for Evaluation of the Consistency of Foreign Trade Measures with the Provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures,'' was developed by a subcommittee of the TPSC which focuses on issues related to the WTO SPS Agreement. These questions are attached as an annex to this **Federal Register** notice. They will be used by the TPSC in collecting and organizing information for analysis and for prioritizing potential U.S. Government action on trade barriers raised by sanitary or phytosanitary measures that appear to be inconsistent with the SPS Agreement.

The purpose of this notice is to solicit written public comments on the set of questions developed by the inter-agency TPSC committee. Comments are specifically invited to address the appropriateness and comprehensiveness of the questions as they are set forth in the annex to this **Federal Register** notice. If there are areas of concern or issues which commentors feel have not been fully addressed they should provide their rationale for inclusion or exclusion of such concerns.

DATES: Written comments should be submitted by December 9, 1998.

FOR FURTHER INFORMATION CONTACT: John Payne, Director for SPS Affairs, USTR, telephone (202) 395–6127; or e-mail: jpayne@ustr.gov.

SUPPLEMENTARY INFORMATION: It was recommended in a United States General Accounting Office (GAO) report, entitled ''Agricultural Exports: U.S. Needs a More Integrated Approach to Address Sanitary/Phytosanitary Issues'' (NSIAD–98–32 December 11, 1997) that the U.S. Government should:

> * * * establish a more systematic process by which USDA entities evaluate complaints they receive about SPS measures, determine which ones they should address, prioritize their efforts, develop unified approaches, and determine when to recommend consideration of dispute settlement procedures to USTR. This process should be developed and implemented in consultation with the U.S. Trade Representative, the Commissioner of Food and Drugs, the Administrator of EPA, and the Secretary of State, or their designees.

The USTR in its response to the GAO report stated that the SPS subcommittee of the TPSC would develop a methodology for evaluating SPS issues brought to its attention and that methodology would be used to determine policy options for addressing specific SPS issues which appear to violate the WTO SPS Agreement. USDA in its response to the GAO report stated that a **Federal Register** notice would be published that invited public comment on factors to be taken into account in evaluating and prioritizing trade-related SPS measures.

The SPS subcommittee of the TPSC (comprised of representatives from USTR, the United States Department of Agriculture, the Food and Drug Administration, the Environmental Protection Agency, the State Department, and representatives of other interested Departments and Agencies) developed a set of questions to guide the collection of information to evaluate the consistency of foreign trade measures with the provisions of the SPS Agreement. This set of questions will be amended based on comments provided from this notice and, over time, through experience as new issues are identified that would lead to improving the collection of information for analysis of SPS measures which appear to violate the WTO SPS Agreement.

In order to assist the TPSC in its analysis of specific SPS measures, government Agencies intend to use the set of questions as a tool to systematically collect and organize their information on issues. It is understood that the information responsive to these questions may be provided from a number of sources, including Agencies of the U.S. Government and information voluntarily provided by industry or consumer groups. Failure of the TPSC to obtain answers to some of the questions does not mean that the issue will not be addressed, but the more complete the information, the sooner the evaluation can be completed, and potentially, the sooner the issue could be resolved. This set of questions is intended to ensure that the TPSC is aware of all available information that is pertinent to an issue. It does not imply any particular judgment regarding the relative importance of any specific item of information provided.

Submission of Written Comments

Those persons wishing to submit written comments should provide twenty (20) copies (in English) to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 501, 600 17th Street Northwest, Washington, DC 20508. Comments should state clearly the position taken and should describe the specific information supporting that position.

If the submission contains business confidential information, twenty copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 20003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street Northwest, Washington, DC. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

Annex: The Consistency of Foreign Trade Measures With the Provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures

In order to assist the TPSC in its analysis of the SPS measure in question, please provide as much information as possible in response to the following questions. It is understood that the information requested may be provided from several other sources, including the U.S. Government. Failure to answer questions does not mean that the issue will not be addressed by the TPSC, but the more complete the information, the sooner the evaluation can be completed. If any of the information provided is business confidential, please ensure that specific business confidential information on all copies is so marked.

Please note that this set of questions is intended to ensure that the TPSC is aware of all available information that is pertinent to this issue. It does not imply any judgment regarding the relative importance of any specific questions or specific elements of the information provided.

I. Description of The SPS Barrier

A. What country has imposed a trade restriction or SPS barrier?

B. What product or commodity is affected?

C. What claim (e.g., health, safety, etc.) is the government making as the reason for its measure?

D. Has this issue been brought to the attention of the U.S. Government before? If so, what was the date of the previous communication and to what Agency?

E. Who may have information available to answer more fully questions in this questionnaire? U.S. Government Agencies? Others?

II. Market Impact

A. Which export markets (i.e., countries, territories, regions) are affected by this measure?

B. Which foreign government agencies are responsible for developing, implementing, and enforcing the measure?

C. When was the measure adopted, publicized and implemented? Please provide as complete a chronology as possible.

D. Which U.S. export products are affected? Please provide as detailed a description as possible, including harmonized tariff schedule numbers (If known).

E. What other countries' imports of products into the country taking the measure are (might be) impacted by this measure?

F. What is the approximate value of the actual lost export earnings resulting from the application of this measure? (or) The estimate of lost export earnings which would result if the proposed measure were implemented?

(1) What is the approximate value of U.S. exports of the affected products to the affected markets in recent years?

(2) What is the approximate value of all U.S. exports of the affected products to the world in recent years?

(3) If there is no trade because of the measure (import bans, etc.), what is your estimate of potential market value if the current restriction were removed?

III. Health Objective of the Measure

A. Has the government applying the measure identified that it is doing so to protect human, animal or plant life or health? If so, provide the specific health concern the measure is intended to address. Please provide any available documentation.

B. If the measure is intended to mitigate against a disease or pest, which specifically?

(1) Do the pests or diseases of concern exist in the U.S.?

(2) If the pest or disease exist in the U.S., are there relevant surveillance or monitoring data to demonstrate that the pest or disease does not affect the product for which the measure is taken?

(3) Is the pest or disease known to occur in the country that has applied the measure? If so, is the pest or disease limited or widespread in that countries territory? Is the pest or disease under an official control program or quarantine in that country?

IV. Scientific Basis for the Measure

A. Are there any international standards, guidelines or recommendations which address the same or similar health concerns? Please identify and describe. Would use of those international standards, guidelines or recommendations be more or less trade restrictive than application of the measure in question?

B. Has the government that has applied (or is proposing) the measure conducted a risk assessment which provides a scientific basis for the measure? Are you aware of any other risk assessment upon which the measure may be based?

C. Is there strong scientific evidence that the measure is or is not based on scientific principles or maintained on the basis of sufficient scientific evidence? Does the scientific evidence indicate that application of this measure is necessary to achieve the intended level of health protection (as determined by the government applying the measure)? Please attach a technical summary of the relevant scientific evidence.

D. Have U.S. government or private sector scientists evaluated the scientific basis for the measure in question? If so, what is their view?

E. Does the measure take into account the sanitary and phytosanitary characteristics of the areas from which the affected products originate and the areas to which they are destined (e.g., does in recognize post harvest risk mitigation techniques and pest-free or disease-free production areas)?

F. How much technical analysis and research are required to generate conclusions regarding the other county's SPS measure (low, medium, high)? What are the research costs, current activity, and funding sources?

V. Consistency of the Measure

A. Has the measure been enforced consistently and in a non-discriminatory manner?

(1) Is the measure applied in a non-discriminatory way to all international suppliers, where identical or similar conditions prevail?

(2) Does the government applying the measure apply the measure in a non-discriminatory way to both imported and domestic products, where identical or similar conditions prevail? If not, has the government given a reason why it does not?

(3) Is the measure applied seasonally? If so, is there a scientific justification for seasonal implementation? How does seasonal implementation relate to seasonal U.S. export patterns?

VI. Transparency and Other Procedural Issues

A. To your knowledge, has the measure been formally notified through WTO notification procedures to the SPS Committee? Other WTO Committees?

B. Did the government applying the measure provide an opportunity for U.S. firms to comment on the measure before its adoption and implementation? Were any comments provided in response? If so, were they taken into account in the development of the final measure?

C. Did the government applying the measure provide sufficient time for U.S. exporters to adjust to the measure prior to its implementation?

VII. Previous or Ongoing Consultations

A. Have there been any consultations between the government applying the measure and affected (private sector) U.S. exporters? If so, when did those consultations take place, which foreign government agencies were involved, and what were the results? Please attach as detailed a chronology as possible.

B. Have there been any official bilateral consultations between the government applying the measure and the U.S. government regarding the application of the measure? When did those consultations take place, and which U.S. and foreign government agencies were involved?

C. Have any third parties sought or conducted consultations with the government applying the measure on this issue? If so, what were the results?

D. Are issues relevant to the application of this measure currently on the agenda of any relevant international standards setting bodies or other regional or international organizations?

VIII. Comparable Measures

A. What SPS measures, if any, does the United States apply in order to address the same or similar health concerns in association with the same or comparable products? In other words, What are the comparable U.S. measures, including related domestic and interstate regulations, to protect against the same or comparable risks?

(1) Are those U.S. measures more or less trade restrictive than the foreign measure in question?

(2) Are there any known scientific or other legitimate reasons for any difference between the foreign measure in question and the comparable U.S. measures?

B. What SPS measures, if any, do other governments apply in order to address the same or similar health concerns? Are these measures more or less restrictive than the measure in question?

C. Is there any other reasonably available measure or risk mitigation strategy which, taking into account technical and economic feasibility, would achieve the intended level of health protection (as determined by the government applying the measure) in a less trade-restrictive manner? Please provide any available scientific evidence which would demonstrate the efficacy of such alternatives.

IX. Other Information

A. Is there any other relevant information not asked for in previous questions, or information you believe to be pertinent that has not been provided in response to the previous questions?

B. Information in the following categories is particularly useful:

(1) Chronology of actions leading to the adoption and implementation of the measure.

(2) Chronology of any consultations between U.S. traders or U.S government representatives and the government applying the measure in question.

(3) Any available documentation of the specific requirements imposed under the measure and of the health justification identified by the government applying the measure.

(4) A technical summary of any available scientific evidence which calls into question the scientific basis for the measure.

[FR Doc. 98–29990 Filed 11–6–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) Hosted Forum on the Capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics. Requests to make presentations to the assembled forum should be made to the point of contact listed.

DATES: November 16–17, 1998, 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, VA 22033, adjacent to the Fair Oaks Mall.

POINT OF CONTACT: Registration, submission of suggested discussion topics and requests to make presentations may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or e-mail at steven.albers@faa.gov.

SUPPLEMENTARY INFORMATION: Open to the aviation industry with attendance limited to space available. Participants are requested to register their intent to attend this meeting by October 30, 1998. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed.

Dated: September 22, 1998.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 98–29950 Filed 11–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–1998–4694

Block Signal Application (BS–AP)–No. 3484

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on the two main tracks, at South Yard, milepost S–1.7, Richmond, Virginia, on the Bellwood Subdivision, Florence Service Lane, consisting of the conversion of the power-operated crossover to hand operation equipped with an electric locked turnout, and the discontinuance and removal of absolute controlled signals L10, R10, L14, and R14.

The reason given for the proposed changes is that present day traffic does not warrant the retention of the remote controlled location.

Docket No. FRA–1998–4695

BS–AP–No. 3485

Applicant: Port of Pend Oreille, dba Pend Oreille Valley Railroad, Mr. Clifford G. Robbins, Port Operations Manager, 1981 Black Road, Usk, Washington 99180

Port of Pend Oreille, dba Pend Oreille Valley Railroad seeks approval of the proposed discontinuance and removal of all slide detectors and indicators, on the former Burlington Northern and Santa Fe Railway Company's Newport Branch, between Dover, Idaho, milepost 1406 and Newport, Washington, milepost 1431, at five separate locations. The proposed changes include the installation of permanent ''restricted speed'' signs at proper locations.

The reasons given for the proposed changes are: the lack and prohibitive installation costs of A.C. power, replacement and disposal costs of primary batteries every 18 months, high vandalism rates, and to facilitate the cleaning of debris from the ditches.

Docket No. FRA–1998–4696

BS–AP–No. 3486

Applicant: Burlington Northern and Santa Fe Railway Company, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106

Burlington Northern and Santa Fe Railway seeks approval of the proposed retirement of Tower 16 Interlocking, milepost 645.6, and the approximately 400-foot reduction of the traffic control system limits, on the single main track,

near South Sherman, Texas, milepost 645.5, on the Texas Division, Madill Subdivision, associated with the removal of the TNER crossing diamond. The proposed changes consist of the discontinuance and removal of all associated controlled and interlocked signals, conversion of the Old Frisco Main, power-operated switch to a spring switch, conversion of existing TNER power-operated switch to hand operation, discontinuance and removal of the power-operated derail on the TNER connection, and designation of the existing ''Restricted Limits'' operations between South Sherman, milepost 645.5 and Hank, milepost 647.7, to Track Warrant Control.

The reason given for the proposed changes is that the switches involved are presently controlled by the Interlocking operator, which will be retired with removal of the diamond.

Docket No. FRA–1998–4697

BS–AP–No. 3487

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main, between milepost Z–37.0 and milepost Z–38.0, near Dante, Virginia, on the KP Subdivision, Appalachian Division, consisting of the conversion discontinuance and removal of controlled signals 38L and 38R.

The reason given for the proposed changes is to increase operating efficiency.

Docket No. FRA–1998–4698

BS–AP–No. 3488

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single and two main tracks, between FD Cabin, milepost CLS–65.2 and Huff Junction, milepost CLS–78.9, West Virginia, on the Logan Subdivision, C&O Business Unit, a distance of approximately 13.7 miles. The proposed method of operation will be by a Direct Traffic Control Block System between milepost CLS–67.1 and milepost CLS–78.9, and Rule 105 between milepost CLS–65.2 and milepost CLS–67.1.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

Docket No. FRA–1998–4699

BS–AP–No. 3489

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control and automatic block signal systems, on the two main tracks, between a milepost BG–89 and milepost BG–107, near Newton Falls, Ohio, on the New Castle Subdivision, Cumberland Division, consisting of the following:

1. Discontinuance and removal of absolute controlled signals 3R, L3A, and L3B, at West Switch, milepost BG–105.31, and conversion of the power-operated switch to hand operation;
2. Discontinuance and removal of absolute controlled signals R5A, L5, R11, L11A, and L11B, at FS Tower, milepost BG–103.90, and conversion of the three power-operated switches to hand operation;
3. Discontinuance and removal of absolute controlled signals R13A, R13B, and LB, at East Switch, milepost BG–102.52, and conversion of the power-operated switch to hand operation;
4. Discontinuance and removal of absolute controlled signals 2R, 2L, and E, near milepost BG–98.5, and conversion of the existing spring switch to hand operation;
5. Discontinuance and removal of absolute controlled signals 6RA, 6RB, and 6L, near milepost BG–96.2, and conversion of the power-operated switch to hand operation;
6. Discontinuance and removal of absolute controlled signals 18LA, 18LB, and 14R, near milepost BG–95.65, and conversion of the power-operated switch to hand operation; and
7. Discontinuance and removal of absolute controlled signals 20RA, 20RB, W1, near milepost BG–94.5, and conversion of the existing spring switch to hand operation.

The reason given for the proposed changes is to increase efficiency and eliminate facilities no longer needed in present day operation.

Docket No. FRA–1998–4700

BS–AP–No. 3491

Applicant: Consolidated Rail Corporation, CSX Transportation, Incorporated, and Norfolk Southern Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S Assets, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

The Consolidated Rail Corporation (Conrail), CSX Transportation, Incorporated, and Norfolk Southern Corporation, jointly seek approval of the proposed discontinuance and removal of ''CP Short'' Interlocking, milepost 17.9, near Cleveland, Ohio, on Conrail's Dearborn Division, where two main tracks of the Short Line, cross at grade, the single main track of the Clark Branch. The proposal consists of the discontinuance and removal of all controlled signals, and conversion of the all remaining switches to hand operation.

The reason given for the proposed changes is to retire facilities no longer needed for present operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 30 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on October 30, 1998.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–29896 Filed 11–6–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 33556]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 19; Notice of Availability of Draft Environmental Assessment and 30-day public comment period.

SUMMARY: The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) issued a Draft Environmental Assessment (Draft EA) for the proposed acquisition of control of Illinois Central Corporation and its railroad affiliates (IC) by Canadian National Railway Company (CN). The Draft EA is available for public review and comment for 30 days. Public comments are due by December 11, 1998. Any interested party may request a copy of the Draft EA or submit comments on the Draft EA by following the procedures discussed below. The Draft EA addresses potential acquisition-related environmental impacts and includes SEA's preliminary environmental mitigation recommendations. In addition, the Draft EA includes a Safety Integration Plan prepared by CN and IC that explains how they propose to safely integrate their separate operations if the Board approves the proposed acquisition. After fully considering all public comments, SEA will consult with appropriate public agencies and conduct additional environmental analysis, as appropriate, in preparing a Final Environmental Assessment (Final EA). SEA plans to issue the Final EA prior to the Board's Oral Argument and Voting Conference, which are currently scheduled for March 1999. In making its final decision on the proposed acquisition, the Board will consider the entire environmental record, including all public comments; the Draft EA; and the Final EA, including SEA's environmental mitigation recommendations. The Board plans to serve the final written decision on May 25, 1999. Any party may file an administrative appeal within 20 days of the Board's final written decision.

DATES: The Draft EA is available for public review and comment for 30 days. Public comments are due by December 11, 1998.

ADDRESSES: All interested agencies, organizations, and individuals are encouraged to comment on the Draft EA by submitting written comments (include an original plus 10 copies) to the address listed below by December 11, 1998, the close of the comment period:

Office of the Secretary, Case Control Unit, Finance Docket No. 33556, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–001, Attn: Elaine K. Kaiser, Environmental Project Director, Environmental Filing

FOR FURTHER INFORMATION CONTACT: To request a copy of the Draft EA or further information on the proposed CN/IC acquisition, interested parties may call SEA's toll-free Environmental Hotline at 1–888–869–1997 (TDD for the hearing impaired: (202) 565–1695), or access SEA's website for the CN/IC acquisition at http://www.cnicacquisition.com. For additional information regarding environmental issues, or the environmental review process, contact SEA's Project Manager for the proposed CN/IC acquisition, Michael Dalton, at (202) 565–1530.

SUPPLEMENTARY INFORMATION: On July 15, 1998, CN and IC, collectively referred to as CN/IC or applicants, filed a joint application [1] with the Board seeking authority for CN to acquire control of IC. The proposed CN/IC system would extend to both the east and west coasts of North America and the Gulf of Mexico. The Chicago area would serve as the hub of the combined system. This new system would cover approximately 18,670 miles of rail lines and related facilities, of which approximately 4,520 miles would be in the United States. The applicants state that integrating CN and IC operations would allow both rail systems to provide more reliable, efficient, and competitive service. The applicants also state that they anticipate relatively minor changes in rail operations as a result of the proposed acquisition. The applicants have proposed no rail line abandonments and only five minor construction projects (one rail line connection and four rail yard bypass tracks) as part of the proposed acquisition.

By the Board, Elaine K. Kaiser, Chief of the Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29981 Filed 11–6–98; 8:45 am]

BILLING CODE 4915–00–P

[1] *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company,* STB Finance Docket No. 33556.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–531 (Sub–No. 2X)]

Pioneer Valley Railroad Company, Inc.—Abandonment Exemption—in Hampshire County, MA

Pioneer Valley Railroad Company, Inc. (PVRR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 0.26-mile line of railroad from milepost 9.40 at the Easthampton/Southampton border to milepost 9.14 at the south side of Coleman Road in Southampton, Hampshire County, MA. The line traverses United States Postal Service Zip Code 01073.

PVRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic formerly handled on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 10, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 20, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 30, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

PVRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 13, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PVRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PVRR's filing of a notice of consummation by November 10, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 3, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29982 Filed 11–6–98; 8:45 am]

BILLING CODE 4915–00–P

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 2, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 9, 1998 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0169.

Form Number: None.

Type of Review: Extension.

Title: Sudanese Sanctions Regulations.

Description: Submissions will provide the United States Government with information to be used in implementing Executive Order 13067 and enforcing sanctions against the Government of Sudan. These information collections will assist in controlling financial transactions involving the Government of Sudan.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 50.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 100 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–29955 Filed 11–6–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 2, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 9, 1998 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0546.

Form Number: None.

Type of Review: Extension.

Title: Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

Description: This letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the firearm is to be used in the official duties of the officer and that he/she has been checked that he/she has not been convicted of a misdemeanor crime of domestic violence. The letter will be retained for at least five years in the licensee's records.

Respondents: State, Local or Tribal Government.

Estimated Number of Recordkeepers: 50,000.

Estimated Burden Hours Per Recordkeeper: 5 seconds.

Frequency of Response: Other (5 years).

Estimated Total Recordkeeping Burden: 25 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–29956 Filed 11–6–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 27, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 9, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0016.

Form Number: IRS Form 706–A.

Type of Review: Revision.

Title: United States Additional Estate Tax Return.

Description: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 180.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 17 min.
Learning about the law or the form—2 hr., 11 min.
Preparing the form—1 hr., 40 min.
Copying, assembling, and sending the form to the IRS—1 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,474 hours.

OMB Number: 1545–0020.

Form Number: IRS Form 709.

Type of Review: Extension.

Title: United States Gift (and Generation-Skipping Transfer) Tax Return.

Description: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. IRS uses the information to enforce these taxes and to compute the estate tax.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 130,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—40 min.
Learning about the law or the form—1 hr., 6 min.
Preparing the form—1 hr., 52 min.
Copying, assembling, and sending the form to the IRS—1 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 608,400 hours.

OMB Number: 1545–0021.

Form Number: IRS Form 709–A.

Type of Review: Extension.

Title: United States Short Form Gift Tax Return.

Description: Form 709–A is used to report gifts that would be taxable that they are ''split'' between husband and wife. The form is a simplified version of Form 709, designed to relieve these gift/taxpayers of the burden of filing Form 709. IRS uses the information to assure that ''gift-splitting'' was properly elected.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: Annually.

Estimated Burden Hours Per Respondent/Recordkeeper: 45,100 hours.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 44,100 hours.

OMB Number: 1545–0023.

Form Number: IRS Form 720.

Type of Review: Extension.

Title: Quarterly Federal Excise Tax Return.

Description: The information supplied on Form 720 is used by the IRS to determine the correct tax liability. Additionally, the data is reported by the IRS to Treasury so that funds may be transferred from the general revenue fund to the appropriate trust funds.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
720	23 hr., 41 min.	2 hr., 23 min.	6 hr., 29 min.
Schedule A	2 hr., 52 min.	3 min..	
Schedule C:.			
Part I	1 hr., 55 min.	6 min.	8 min.
Part II	20 hr., 20 min.	6 min.	20 min.
Part III	14 min.	6 min.	7 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 3,691,999 hours.

OMB Number: 1545–0150.

Form Number: IRS Form 2848.

Type of Review: Extension.

Title: Power of Attorney and Declaration of Representative.

Description: Form 2848 is used to authorize someone to act for the respondent in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. Data is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons. Also used to input representative on CAF (Central Authorization File).

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Respondents/Recordkeepers: 800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—20 min.
Learning about the law or the form—29 min.
Preparing the form—29 min.
Copying, assembling, and sending the form to the IRS—35 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,504,000 hours.

OMB Number: 1545–0531.

Form Number: IRS Form 706–NA.

Type of Review: Extension.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of Nonresident Not a Citizen of the United States.

Description: Under section 6018, executors must file estate tax returns for nonresident noncitizens who had property in the United States. Executors use Form 706–NA for this purpose. IRS uses the information to determine correct tax and credits.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 300.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 38 min.
Learning about the law or the form—32 min.
Preparing the form—1 hr., 46 min.
Copying, assembling, and sending the form to the IRS—41 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,307 hours.

OMB Number: 1545–0790.

Form Number: IRS Form 8082.

Type of Review: Extension.

Title: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

Description: Internal Revenue Code (IRC) sections 6222 and 6227 require partners to notify ITS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222), and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs. Also, sections 6241 and 6034A(c) extend this requirement to partners in electing large partnerships and beneficiaries of estates and trust.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 10,600.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 18 min.
Learning about the law or the form—42 min.
Preparing and sending the form to the IRS—48 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 61,480 hours.

OMB Number: 1545–1038.

Form Number: IRS Form 8703.

Type of Review: Extension.

Title: Annual Certification of a Residential Rental Project.

Description: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of Internal Revenue Code (IRC) section 142(d). Operators are required to file this certification form under section 142(d)(7).

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 50 min.
Learning about the law and the form—1 hr. 17 min.
Preparing and sending the form to the IRS—1 hr., 25 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 39,180 hours.

OMB Number: 1545–1135.

Form Number: IRS Form 8817.

Type of Review: Extension.

Title: Allocation of Patronage and Nonpatronage Income Deductions.

Description: Form 8817 is used by taxable Farmer Cooperatives to indicate their income deductions by patronage and nonpatronage source. IRS uses this information to improve the classification of returns for examination, and to enhance taxpayer compliance.

Respondents: Business or other for profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 1,650.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—16 hr., 44 min.
Learning about the law or the form—36 min.
Preparing and sending the form to the IRS—53 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 21,978 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–29957 Filed 11–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 2, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 9, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Form Number: None.

Type of Review: Extension.

Title: Cognitive and Psychological Research.

Description: The proposed research will improve the quality of data collection by examining the psychological and cognitive aspects of methods and procedures such as: Interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).

Respondents: Business and other for-profit, Individuals or households.

Estimated Number of Respondents: 22,000.

Estimated Burden Hours Per Respondent: 27 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–29958 Filed 11–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–52

AGENCY: Internal Revenue Service (IRS), 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 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–52, Notice on Nondiscriminatory Safe Harbors.

DATES: Written comments should be received on or before January 8, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice on Nondiscriminatory Safe Harbors.

OMB Number: 1545–1624.

Notice Number: Notice 98–52.

Abstract: This notice provides guidance to plan administrators, plan sponsors, etc., regarding nondiscriminatory safe harbors with respect to Internal Revenue Code sections 401(k)(12) and 401(m)(11), as amended by the Small Business Job Protection Act of 1996. The safe harbor provisions pertain to the actual deferral percentage test and the actual contribution percentage test for cash or deferred arrangements and for defined contribution plans. To take advantage of the safe harbor provisions, plan sponsors must amend their plans to reflect the new law and must provide plan participants with an annual notice describing the benefits available under the plan.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

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

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 1 hour, 20 minutes.

Estimated Total Annual Burden Hours: 80,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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, 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) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–29844 Filed 11–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8866

AGENCY: Internal Revenue Service (IRS), 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 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8866, Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

DATES: Written comments should be received on or before January 8, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

OMB Number: 1545–1622.

Form Number: Form 8866.

Abstract: Taxpayers depreciating property under the income forecast method and placed in service after September 13, 1995, must use Form 8866 to compute and report interest due or to be refunded under Internal Revenue Code 167(g)(2). The Internal Revenue Service uses the information on Form 8866 to determine if the interest has been figured correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 12 hours, 36 minutes.

Estimated Total Annual Burden Hours: 63,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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, 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) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–29845 Filed 11–6–98; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 63, No. 216

Monday, November 9, 1998

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 COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Review, Requests for Revocation in Part and Deferral of Administrative Reviews

Correction

In notice document 98–29047, beginning on page 58009, in the issue of Thursday, October 29, 1998, make the following correction.

On page 58010, in the table, in the first entry for the People's Republic of China, ''A–570–920'' should read ''A–570–820''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 28859; Amendment No. 107-12, 108-17]

RIN 2120-AG32

Employment History, Verification and Criminal History Records Check

Correction

In rule document 98–25210 beginning on page 51204, in the issue of Thursday, September 24, 1998, make the following corrections:

1. On page 51204, in the third column, in the tenth line from the bottom, ''that'' should read ''the''.

2. On page 51206, in the first column, in the first full paragraph, in the fourth line from the bottom, ''of'' should read ''or''.

§ 107.31 [Corrected]

3. On page 51218, in the third column, § 107.31 (c), in the third line, ''competed'' should read ''completed''.

4. On page 51219, in the third column, in § 107.31 (h)(2), in the first line, ''not'' should read ''no''.

§ 108.33 [Corrected]

5. On page 51222, in the second column, in § 108.33 (j)(2), in the third line, ''(d)'' should read ''(a)''.

BILLING CODE 1505-01-D

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:

Tribal temporary assistance for needy families and Native employment works programs; comments due by 11-20-98; published 9-23-98

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Food and Drug Administration

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In vivo radiopharmaceuticals used for diagnosis and monitoring—

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 678/P.L. 105–331

Thomas Alva Edison Commemorative Coin Act (Oct. 31, 1998; 112 Stat. 3073)

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Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998 (Oct. 31, 1998; 112 Stat. 3076)

H.R. 2000/P.L. 105–333

ANCSA Land Bank Protection Act of 1998 (Oct. 31, 1998; 112 Stat. 3129)

H.R. 2327/P.L. 105–334

Drive for Teen Employment Act (Oct. 31, 1998; 112 Stat. 3137)

H.R. 3830/P.L. 105–335

Utah Schools and Lands Exchange Act of 1998 (Oct. 31, 1998; 112 Stat. 3139)

H.R. 3874/P.L. 105–336

William F. Goodling Child Nutrition Reauthorization Act of 1998 (Oct. 31, 1998; 112 Stat. 3143)

H.R. 4259/P.L. 105–337

Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998 (Oct. 31, 1998; 112 Stat. 3171)

H.R. 4655/P.L. 105–338

Iraq Liberation Act of 1998 (Oct. 31, 1998; 112 Stat. 3178)

S. 1021/P.L. 105–339

Veterans Employment Opportunities Act of 1998 (Oct. 31, 1998; 112 Stat. 3182)

S. 1722/P.L. 105–340

Women's Health Research and Prevention Amendments of 1998 (Oct. 31, 1998; 112 Stat. 3191)

S. 2285/P.L. 105–341

Women's Progress Commemoration Act (Oct. 31, 1998; 112 Stat. 3196)

S. 2240/P.L. 105–342

Adams National Historical Park Act of 1998 (Nov. 2, 1998; 112 Stat. 3200)

S. 2246/P.L. 105–343

To amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commomwealth of Massachusetts, by modifying the boundary, and for other purposes. (Nov. 2, 1998; 112 Stat. 3203)

S. 2413/P.L. 105–344

Prohibiting the conveyance of Woodland Lake Park tract in

Apache-Sitgreaves National Forest in the State of Arizona unless the conveyance is made to the town of Pinetop-Lakeside or is authorized by Act of Congress. (Nov. 2, 1998; 112 Stat. 3204)

S. 2427/P.L. 105–345
To amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work. (Nov. 2, 1998; 112 Stat. 3205)

S. 2505/P.L. 105–346
To direct the Secretary of the Interior to convey title to the Tunnison Lab Hagerman Field Station in Gooding County, Idaho, to the University of Idaho. (Nov. 2, 1998; 112 Stat. 3206)

S. 2561/P.L. 105–347
Consumer Reporting Employment Clarification Act of 1998 (Nov. 2, 1998; 112 Stat. 3208)

S.J. Res. 51/P.L. 105–348
Granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia. (Nov. 2, 1998; 112 Stat. 3212)

S.J. Res. 58/P.L. 105–349
Recognizing the accomplishments of Inspectors General since their creation in 1978 in preventing and detecting waste, fraud, abuse, and mismanagement, and in promoting economy, efficiency, and effectiveness in the Federal Government. (Nov. 2, 1998; 112 Stat. 3216)

H.J. Res. 138/P.L. 105–350
Appointing the day for the convening of the first session of the One Hundred Sixth Congress. (Nov. 3, 1998; 112 Stat. 3218)

S. 538/P.L. 105–351
To authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes. (Nov. 3, 1998; 112 Stat. 3219)

S. 744/P.L. 105–352
Fall River Water Users District Rural Water System Act of 1998 (Nov. 3, 1998; 112 Stat. 3222)

S. 1260/P.L. 105–353
Securities Litigation Uniform Standards Act of 1998 (Nov. 3, 1998; 112 Stat. 3227)

S. 2524/P.L. 105–354
To codify without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code. (Nov. 3, 1998; 112 Stat. 3238)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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